

respond on behalf of clients to charges of discrimination filed with the Equal Employment Opportunity Commission and/or analogous state agencies. In connection with my work on this case I prepared an Original Expert Report dated September 3, 2010, and an Amended Expert Report dated September 13, 2010. I have read my Original and Amended Reports attached to my affidavit as Exhibit 'A' and Exhibit 'B' respectively. Exhibit 'A' is a true and correct copy of my Original Report. Exhibit 'B' is a true and correct copy of my Amended Report. My educational background and qualifications are set forth in my curriculum vitae of which a true and correct copy is attached hereto as Exhibit "C." I incorporate by reference herein all of the facts, testing, supporting documents and opinions set forth in both my Original and Amended Reports and verify that the information and opinions set forth in both reports are within my personal knowledge and are true and correct. The opinions that I expressed in both my Original and Amended Reports are based upon my education, training and experience. Each and every opinion that I expressed in my Original and Amended Reports were reached as a result of the methodology stated therein, and I am prepared to offer each and every opinion at trial."

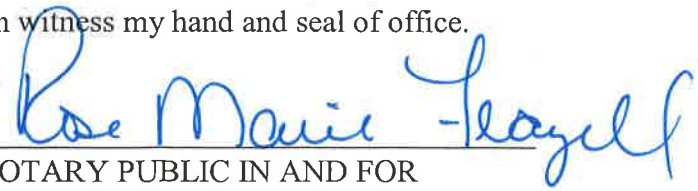
Further Affiant sayeth not.


BRIAN T. FARRINGTON

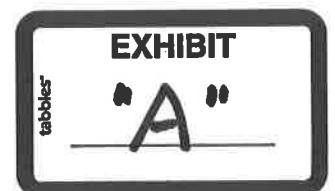
SUBSCRIBED AND SWORN TO BEFORE ME, on this the 5th day of

January, 2011, to certify which witness my hand and seal of office.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

EXPERT REPORT OF BRIAN T. FARRINGTON



EXPERT REPORT OF BRIAN T. FARRINGTON IN *BEALL, et al. v. TYLER TECHNOLOGIES, INC., AND EDP ENTERPRISES, INC.*

I was retained by Sloan, Bagley, Hatcher & Perry Law Firm, to provide a professional opinion on whether the job duties and responsibilities of the plaintiffs and other employees alleged to be similarly situated in this case require the exercise of discretion and independent judgment according to the standards applied by the U.S. Department of Labor, Wage and Hour Division ("USDOL/WH").

BACKGROUND

I was employed by the United States Department of Labor, Wage and Hour Division ("Wage and Hour") from 1975 to 1989, with 18 months off for graduate school. From 1975 to 1984, I was a Compliance Officer (an investigator) in Chicago, Illinois and then in Fort Worth, Texas. My primary function was to enforce the laws administered by the Wage and Hour Division, primarily the Fair Labor Standards Act ("FLSA"). I conducted anywhere from 500 to 600 full investigations during this time, as well as 300 to 400 more limited compliance actions. From 1984 to 1989 I was the Assistant District Director in Dallas (the position is now called "Director of Enforcement"). I supervised from 12 to 16 investigators in this position. I assigned them their cases, assisted and advised them during the conduct of their investigations, and reviewed their completed case files. During this review, I evaluated whether the evidence supported the investigators' findings and conclusions and whether the FLSA had been properly applied. I determined whether claimed and/or potentially applicable exemptions had been correctly found to be applicable or not. I also reviewed the interviews conducted by the investigator to see if they supported the investigator's findings adequately. When back wages were computed, I reviewed those computations for both accuracy and proper methodology.

When the investigator was unable to resolve outstanding issues, I met with employers and/or their attorneys in second level conferences to attempt to settle the cases. If no resolution acceptable to the agency could be reached, I made the decision whether a file was suitable to send to the Regional Solicitor of Labor with a recommendation for litigation. If litigation was recommended, I ensured that conclusions were sound and supported by the evidence, and commented on additional factors such as evidence of willfulness. I estimate that I supervised approximately 5,000 investigations while I was Assistant District Director.

I left the Department of Labor in 1989 and went into private consulting on wage and hour and other labor matters with a consulting firm called Harry Weisbrod Associates, which I have since purchased. I also attended law school after leaving the Department of Labor and received my J.D. from the Texas Wesleyan School of Law and was licensed to practice law in 1994. My law practice consists almost exclusively of representing and advising clients in wage and hour and EEOC matters. When appearing

as an expert witness, I have been engaged by both plaintiffs and defendants. I also do many speeches, seminars and training programs on FLSA and other employment issues.

Since 1989, I have spent a substantial portion of my time in dealing directly with USDOL/WH while representing clients in investigations. I also maintain professional relationships with a number of agency personnel, and discuss developments in the law and in agency policies, procedures, and interpretations of the law with them. I am therefore up to date on the agency's policies, procedures, interpretations, and enforcement positions. In addition, I keep myself informed on developments in the statutes enforced by USDOL/WH, especially the FLSA, and in relevant regulations and opinions. I also keep up with FLSA case law. I apply this knowledge continuously in advising employers on wage-hour issues and representing them in USDOL/WH investigations. I continue to publish on such issues, as noted below.

DATA AND OTHER INFORMATION CONSIDERED IN FORMING OPINIONS

1. Depositions of Talina McElhaney, Lisa White, Linda Carrington, Russell Steele, Melanie Baird, Tony Dodd, Eric Emde, Lorraine Mutch, Eyvonne Wilton, Thomas O'Haver, Joy Bibles McLeod, David Hayner, Sandra Dunning, Kelly Hampton, Bethany Maynard, Joy Flynn, Titus Britt, Geraldine Ingram, Travis Void, Ilene Meyers, Christopher Hepburn.
2. Declarations of Kim Huynh, Talina McElhany, Lisa White, Kelly Hampton, Tony Dodd, Ilene Meyers, Tom O'Haver, Joy Bibles.
3. Plaintiffs' First Amended Collective Action Complaint
4. Defendants' Answer to Plaintiffs' First Amended Collective Action Complaint
5. Chart of IS Plaintiffs by Division and job duties

OTHER CASES IN WHICH I HAVE TESTIFIED AS EXPERT IN AT LEAST THE LAST FOUR YEARS

1. United States District Court for the Northern District of Georgia, Rome Division, Case No.: 4:99-CV-0001-HLM (*McDermott, et al. v. Cracker Barrel Old Country Store, Inc.*). Expert for Plaintiffs on compensability of lock-in time, and payment of minimum wage for side work. Deposition.
2. United States District Court for the District of Oregon, Case No. MDL Docket No. 1439, (*In re: Farmer's Insurance Exchange Claims Representatives' Overtime Pay Litigation*). Witness for Defendant re: claims representatives in FLSA case. [Note: gave no opinion testimony, but reported on results of test sample claims.] Trial testimony.

3. District Court, City and County of Denver, Case No. 01CV4773 (*Chase v. Farmer's Insurance Exchange, Inc.*) Expert for Defendant re: exercise of discretion and independent judgment by claims representatives in Colorado wage and hour case. Deposition.
4. District Court, Fourth Judicial District, State of Minnesota, County of Hennepin, Court File EM 01-015004 (*Milner, et al. v. Farmers Insurance Exchange, et al.*), Expert for Defendant re: exercise of discretion and independent judgment by claims representatives in Minnesota wage and hour case. Deposition.
5. United States District Court for the Western District of Texas, Case No. EP-02-CA-0564-FM (*Acosta v. County of El Paso*), Expert for Defendant re: off clock hours allegedly worked by detention officers, and offset of off-clock hours by paid lunch period. Deposition.
6. United States District Court for the Northern District of Alabama, Western Division, Civil Action No. CV-01-C-0303-W, (*Morgan et al. v. Family Dollar Stores, Inc.*) Expert for the Plaintiffs re: application of the executive exemption. Deposition.
7. United States District Court for the District of Arizona, Case No. CIV03 2262 PHX ROS (*Hutton v. Bank of America*), Expert for Defendant re: administrative exemption, back wage computation, willfulness. Deposition.
8. Judicial Court, 49th Judicial District, Webb Co., Texas, Case No. 2003 CV F000553D1, (*The Laredo National Bank and Homeowners Loan Corporation v. Jacob Monty and the Monty Law Firm, P.C.*) Expert for Defendant re: reasonableness of attorney's opinion on administrative exemption. Deposition.
9. United States District Court for the Southern District of Florida, Case No. 04-22640 CIV-JORDAN (*Garcia v. Port Royale Trading Co., Inc., et al.*). Expert for Defendant re: back wage calculation. Deposition.
10. United States District Court for the Northern District of Alabama, Southern Division, Case No. CV-02-TMF-1174-S (*Chao v. Tyson Foods, Inc.*), Expert for Defendant re: willfulness. Deposition.
11. United States District Court for the Northern District of Alabama, Western Division, Case No. 7:06-CV-01538-LSC (*Womack v. Dolgencorp, Inc., et al.*), Expert for Plaintiffs re: executive exemption. Deposition.
12. Long John Silver

PUBLICATIONS

1. Wage-Hour Compliance. Authored book published 1995 by Warren, Gorham and Lamont, NY, NY.
2. Wage Hour and EEOC Compliance and Litigation Prevention. Published 1991 by the Professional Development Institute at the University of North Texas, Denton, TX. Authored training manual for all day course on the subject.
3. A CPA's Guide to Workplace Regulation. Published 2000 by the American Institute of CPA's. Training manual for an all day course on the subject.
4. Society for Human Resource Management, "Legal Report" on the 1996 FLSA Amendments.
5. I wrote several articles for "Payroll Perspectives," a newsletter published by Ernst and Young.
6. I wrote several articles for "Auto, Inc.," a magazine published by the Automotive Service Association.
7. I wrote several articles for "Self Storage," a magazine published by the Self Storage Association.
8. Harry Weisbrod Associates previously published a bi-monthly newsletter in which I wrote regularly.
9. I have written other articles for industry groups over the years that I have not kept track of.
10. A Wage and Hour Guide for the Self Storage Industry. Published 2006 by the Self Storage Association, Alexandria, Virginia. Review of FLSA requirements and of major state wage and hour law considerations as they apply to employers in the self storage industry.

OPINIONS AND BASIS

METHODOLOGY

The principal method which USDOL/WH enforcement personnel use to make determinations on the application of the administrative exemption (among others) is to conduct interviews with employees in the job or jobs at issue. USDOL/WH investigative procedure is for the investigator to select employees from among current and former incumbents in the jobs at issue, and to interview them either in person or by telephone

and obtain from them information about their job duties and responsibilities. There are no hard and fast rules on the number or distribution, geographic or organizational, of employees to be interviewed. The investigator is to interview enough employees to allow him to feel confident that he has a good understanding of what the employees in the subject jobs do.

In this case I was able to read a number of depositions of opt-in Plaintiffs, which included, among other things, their accounts of their duties and responsibilities. In addition, I read the deposition of the person deemed by the defendants to be most knowledgeable concerning the duties and responsibilities of the plaintiffs, so that I could get the employer's perspective.

The opinions I express in this report are of the same type that I would have developed in my work for the USDOL/WH, and subsequently in advising clients on wage and hour issues. I hold all of my opinions to a reasonable degree of certainty in my field. The work I have done and the methods I used in this case are the same type of work that I did while employed at USDOL/WH and use the method I used at the agency when addressing possible overtime violations. I was as careful in performing the work in this case as I was when at USDOL/WH, and in my normal professional activities.

DISCRETION AND INDEPENDENT JUDGMENT

The Fair Labor Standards Act of 1939, as amended (29 U.S.C. §§ 201 et seq.) (hereinafter "FLSA" or the "Act") generally requires that employees be paid overtime when they work in excess of 40 hours in a workweek, unless an exemption applies. There are, however, a number of exemptions from the overtime requirements of the Act. The most important of these exemptions is the exemption from minimum wage and overtime contained in Section 13(a)(1) of the Act (29 U.S.C. 213(a)(1)) for bona fide executive, administrative, and professional employees, and outside salespeople. The statute itself does not define the terms "executive," "administrative," "professional," or "outside sales," however. Rather, the statute authorizes the Secretary of Labor to define and delimit those terms by appropriate regulation. The regulation in which these terms are defined and delimited is 29 CFR 541.

From the materials and information available to me, employees like Plaintiffs did not supervise other employees, nor were they engaged in work requiring knowledge of an advanced type in a field of science or learning, nor were they involved in sales activities. Therefore, the executive, professional, and outside sales exemptions could not be applicable to them, leaving the administrative exemption.

There are several elements to the administrative exemption in addition to the performance of some work requiring the exercise of discretion and independent judgment, but I have not been asked to opine on those elements. I have been asked to review the duties and responsibilities of employees included in this action and give an opinion as to whether, under the standards applied by the USDOL/WH, the work of the plaintiffs does, in fact, require the exercise of discretion and independent judgment.

The current regulation defines discretion and independent judgment as follows:

In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed. 29 CFR 541.202(a).

The regulation continues:

(b) The phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

It is true that the exercise of discretion and independent judgment does not require that employees make final decisions. Rather, employees who make recommendations can meet the regulatory requirement, as long as their recommendations are given particular weight. However, the recommendations must themselves involve the exercise of discretion and independent judgment.

On the other hand:

(e) The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources. *See also* § 541.704 regarding use of manuals. The exercise of discretion and independent judgment also does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive,

recurrent or routine work. An employee who simply tabulates data is not exempt, even if labeled as a "statistician."

(f) An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly....

This standard is not significantly different from the standard in the previous (i.e., prior to August 23, 3004) version of the regulation, which stated that discretion and independent judgment:

...[involving] the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term as used in the regulations in subpart A of this part, more over, implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance....

Further, both prior enforcement positions of USDOL/WH and prior court cases on this issue remain relevant—as the Preamble to the current regulation states:

Accordingly, while retaining this standard from the existing regulations, final section 541.202 clarifies the definition of discretion and independent judgment to reflect existing federal case law and to eliminate outdated and confusing language in the existing interpretive guidelines. The Department intends the final rule to clarify the existing standard and to make the standard easier to understand and apply to the 21st Century workplace.

Final section 541.202(a) thus restates the requirement that the exempt administrative employee's primary duty must "include" the exercise of discretion and independent judgment and includes the general definition of this term, taken word-for-word from the existing interpretive guideline at subsection 541.207(a): "In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered." 69 FR 22142

CATEGORIES OF EMPLOYEES INVOLVED

I have been asked to look at Implementation Consultants. According to the deposition testimony, these kinds of employees are/have also been referred Implementation Specialists, and Client Liaison at various times and in different divisions of the defendants. In addition, the duties of employees known as Trainers performed duties similar to employees with the other titles mentioned above, although Trainers may

not have done all the functions that the other employees did. In any event, I will refer to the position(s) in question as Implementation Consultants, or “IC’s.”

APPLICABLE STANDARDS

REGULATIONS

Since this action was filed in May, 2009, and since the maximum statute of limitations under the FLSA is three years, the applicable regulatory standard is the current version of 29 CFR 541, which has been in effect since August 23, 2004.

DUTIES OF IC’S

According to Christopher Hepburn, who is the person designated by the defendants as most knowledgeable about the duties of the plaintiffs, the primary duties involved in the implementation process would be:

- analyze clients’ current business practices
- determine any changes to business practices
- configure software to “adhere to” the changed business practices
- review configuration with clients
- receive client acceptance
- review conversion files
- load conversion files
- educate senior staff and other staff on the particular Tyler Technologies’ application in question
- assist with the “go live” transition
- assist with post-go live support

(see Hepburn deposition, p. 232, lines 11 – 18).

The testimony of the IC’s includes most of these duties, although their descriptions or characterizations of the functions often differ from those of Mr. Hepburn. In any event, none of the functions listed by Mr. Hepburn would involve the exercise of discretion and independent judgment as that term is used in the regulations. Rather, they involve product knowledge, and the use of skill in applying well-established techniques, procedures or specific standards. I will examine each in turn.

The analysis of clients’ current business practices was simply the determination of what particular steps, processes, forms, etc., the client was using, so that the defendants could adapt their software to allow the client to carry out its functions. It primarily involved questioning client employees. This “analysis” was simply information gathering, in light of the gatherers’ knowledge of what the software did. Combined with questions about what the client was currently doing was what changes the

client might want to make. It is important to note, however, that this did not involve advising the client on what they should do. Rather, it was simply ascertaining what they did do, and what they wanted to do. As Mr. Hepburn put it:

A. We'll take accounts payable [as an example]. They have a choice whether they would like to centralize accounts payable functions of decentralize accounts payable functions....

Q. Okay. And would you tell the client which on they should do?

A. No. my role was to explain the division—the divisions, the pros of one the cons of one, pros of the other, cons of other. Ultimately, it's their decision. My role would be to offer—

Q. Options?

A. --options and the detailed analysis of those options backup not a recommend. (Hepburn deposition, p. 25, ll. 7 – 20)

This sort of process in this sort of setting, knowing what questions to ask, how to follow up on those questions to elicit the information needed to implement the defendants' software, has always been treated by USDOL/WH as a skill, not the exercise of discretion and independent judgment. In addition, in many cases this sort of function is performed by solely or primarily by project managers rather than by IC's:

Q. Did you as an implementation consultant—I'm sorry—implementation specialist at Tyler ever undertake an analysis of what the client needs and wants—similar to how you described the project manager typically does?

A. No. That was the project manager's duties. (Meyers' deposition, p. 48, ll. 2 – 7).

In addition, in some cases checklists were used:

Q. All right. So during this initial call you would gather information about the existing customer's data?

A. Yes.

Q. And how would you know what questions to ask?

A. We had a list, a checklist more or less, of questions that we had to ask and answer and check off as they answered them. (McElhany deposition, p. 53, ll. 11 – 18)

Thomas Dodd says:

Q. It is titled Implementation Checklist 1.9, correct?

A. Correct.

* * * *

Q. Okay, what is it?

A. It looks like just a checklist for what we did to go through for implementation.

Q. Do you recognize the document?

A. I do. There is numerous versions of this, but it is a general outline of how to do...how to stage software and whatnot.

Q. So you would use that at the configuration staging?

A. In the staging phase of the implementation.

Q. Did you ever use this in connection with your job?

A. Oh, certainly. This, or a more modern version.

Q. Is this a document that is tailored to a particular project?

A. No. It just happened to be one that I printed out. I mean, they had a lot of documents similar to this available on line, on the Internet. (Dodd deposition, p. 45, l. 17 – 46, l. 23

And Mr. Hepburn acknowledges that what an IC offers is not a recommendation, but a set of options (Hepburn deposition, p. 25, ll. 7 – 20) (and those options, of course, are only those contained in the software, not invented by the project manager or IC).

The point that Mr. Hepburn made, that the IC's don't make recommendations, but rather offer options, was echoed by the IC's. For example:

Q. Do you make recommendations based on past experience as an implementation specialist? (objection omitted)

A. No, you try not to.

Q. Not at all?

A. No.

Q. Why not?

A. Because every county is different, and they know what they want, and they've got their own culture and their own thing.

Q. What if they asked you?

A. You just explain to them that it's—I'll tell you how it works, but I'm not going to tell you how to run your office.
(Carrington deposition, p. 109, ll. 11 – 24)

Next, Mr. Hepburn says, the defendants' software had to be "configured"—that is, the particular options contained within the software which the client had chosen had to be activated. For instance, if a deputy court clerk was supposed to have access to one set of files, while the clerk himself or herself had to have access to all files, the software had to be set to allow the appropriate level of access. The actual technical process of adjusting the software might be done by a developer/programmer if it was complex, or by an IC. In either case, however, this does not entail the exercise of discretion and independent judgment. The client has determined who gets what level of access. The software has the ability to be set to provide the determined level of access. It's simply a matter of skill and product knowledge to set or configure the software to assign the determined level of access. Indeed, Mr. Hepburn himself, describing the process (in terms of financial software), said that once the client's parameters had been determined, actually configuring the software was "filling out data tables." (p. 34, ll. 8 – 9).

Mr. Hepburn referred to reviewing the configuration with clients. During both testing and training, the IC's would review what the software did in any particular situation with the client to ensure that it was functioning properly and doing what the client wanted it to do. He described it as building tables and then showing the client an example (p. 36, ll. 17 – 19), a "dry run." Again, this is routine and does not involve discretion and independent judgment:

Q. As you work through the different variables or nuances for this particular client and you configure it to their system, you said you then give them sort of a task list?

A. Yes, Ma'am.

Q. How do you come up with that task list?

A. The task list is already preformed [sic] by the packaging of these implementation packages of to do's and the structure of things you have. You give the agenda to the client. We have

this list of things that we're supposed to do, and we present that to the client. We have these things that we implement from tried and true implementation guide, and that's what—

Q. Like what kind of thing? Is it like a recipe where you say I need to tell you now that you need to---

A. Yes, Ma'am. It's pretty much a recipe. (Bibles McLeod deposition, p. 97, l. 19 – p. 98, l. 11).

Mr. Hepburn mentions client acceptance, which he describes merely as getting a “green light” from the client to move forward, based on the “dry run” examples.

The next duties discussed by Mr. Hepburn are reviewing conversion files and loading conversion files. This involves the client identifying the files they want to be transferred electronically to the new software, rather than having to enter the data manually, and then actually transferring that data to the new software. The purely technical aspects of accomplishing this were done by the programmers:

A. We don't—the implementation person is not really converting data as much as they are checking to make sure data has been converted properly.

Q. But that's part of the conversion process?

A. Yes.

Q. Who is doing the actual data conversion, the programmer?

A. Yes. (Carrington deposition, p. 98, ll. 17 – 24).

Another IC said:

A. I didn't do the conversion.

Q. Yeah. Who would have?

A. I guess the developers. (Steele deposition, p. 93, ll. 10 – 12).

The IC's would review the results with the client, identify any problems and notify the programmers so that these problems could be fixed, review again until it appeared that the data had been successfully converted to the new software.

A. Once you have given that to the programmer he'll run the initial conversion through the conversion process. And then he would either come and tell us it completely bombed, and

this is what I think is wrong, so gather X, Y, Z information from the customer, or if they had good, clean data, he might could tell you specific areas that needed attention. So you would go back to your customer and say, I need you to do this, this, and this. (McElhaney deposition, p. 63, ll. 6 – 14).

Neither the determination of errors nor their correction was discretionary:

Q. What did you do to verify the customer's data after it was converted?

A. I would compare—once the conversion programmer had gotten a clean enough run through the conversion that he could actually populate the EDPro database, then we would compare certain areas in the Unix data to areas in the EDPro data. I believe I mentioned earlier about once you got to the point where you had data in the database, you could actually run error reports in EDPro, and it would tell you there was missing data here and stuff like that, and then you could go back and look at the Unix data and see why it was missing.

Q. So were these error reports—you would run error reports?

A. It was part of the EDPro program.

Q. Would it happen automatically, or would you have to generate the report?

A. You'd just click a button. (McElhaney deposition, p. 79, l. 19 – p. 80, l. 12).

Nothing the IC's do in this process requires the exercise of discretion and independent judgment. The client identifies the data which must be transferred. The transfer itself is a technical process. The results are either right or wrong—the identified data is either successfully transferred or it is not.

At one point Mr. Hepburn tries to argue that discretion and judgment are used in the conversion process because the IC is “recommending” which data should be converted. After a rather lengthy discussion, though, he ultimately concedes that:

The client would just as soon convert everything because it means less work for them. It's the implementation consultant's job to give them the pros and cons of their decisions that they choose to make meaning I could—an implementation consultant could tell their client we convert you will have more work to do than if we don't convert. Then that

implementation consultant articulates with certainty and conviction why converting data means more work for the client when it would clearly simplistically seem to anyone the converting data would mean less work for a client. It's their—and ultimately the client can still choose hey I want to go down that path and then the implementation consultant lives with that decision and executes. (p. 115, l. 18 – p. 116, l. 6)

The next IC duty identified by Mr. Hepburn is training—educating staff about how to use the software. For most of the IC's, this was the largest or one of the largest components of their duties. And again, there was nothing about the training that required discretion or independent judgment. The software operates the way it operates, and the IC's were familiar with it. They would simply show the client's employees how to perform the operations of their departments using the software. Some IC's used training manuals or guidelines, which they themselves did not design or prepare ("Prepare appropriate training materials as new products are developed, didn't have anything to do with writing training documentation" (Bibles McLeod deposition, p. 90, l. 14 – 16)), which included instructions and screen shots of what the client's employees would see while using the software:

A. Well, they each have a computer, and they each have Odyssey on their computer, and we also had—we had training manuals with screen shots. (Carrington deposition, p. 111, l. 15 – 17.

And another IC:

Q. Was there anything—what were the handouts that you would provide?

A. They were documents provided by Tyler that were instructions sheets on—it essentially covered what we were covering in the classroom.

Q. Okay. Did you determine the agenda for the training in the sense of what particular topics to cover with the employees?

A. No. That was pretty predetermined, you know. It was provided, like I said, in the examples and then I went by the example of the guy that trained me.

Q. When you say examples, what do you mean?

A. Shauna would send out a training template and say here is what we did in such and such county, you know, go by this. And I would go by that training schedule. (Dodd deposition, p. 39, l. 22 – p. 40, l. 12).

Another IC:

A. The only thing I would receive is what module I was teaching. And then I would have the material that was developed by MUNIS or Tyler—whoever—the training material I would have that training material to use.

Q. And what—when you say training material, to what do you refer?

A. It's just a manual for each of the modules. (Meyers, p. 45, l. 6 – 13).

Other IC's had their teaching material "in their head":

Q. You didn't prepare anything that prepared you for the actual training? It was all in your head?

A. Yes.

Q. And when you got there with the personnel, again, you didn't have a document, an agenda, item numbers 1 through 10, going across and checking those off, or did you?

A. I don't recall.

Q. Now, when you were teaching them as to how to enter the citations, did you have a document with you that you would flip through and read in order to try to train them? Or again, it was all your knowledge that you were training them on?

A. Right. Previous experience with the software. (Steele deposition, p. 52, l. 20 – p. 53, l. 8)

IC's had no authority to deviate from the prescribed training:

A. Well, I didn't deviate from the Tyler plan. I had to stay with that, because that's duplicatable, so everything was based on that.

Q. What Tyler plan are you talking about?

A. The Tyler training plan for whatever module we were implementing, because the whole idea is if something happened to me, somebody else had to pick up right where I left off, and people couldn't be told something different or be

confused by that.

Q. But the plan, is that like a customer hand-out? Is that something you're giving to the client?

A. Yeah. There's a training guide. There's an instruction manual. Everything has to be duplicatable, so whatever it was, it had to stay with that. So if I was working with a client, that was always the foundation to keep that duplicatable. (Bibles McLeod deposition, p. 119, l. 5 – 21).

USDOL/WH does not consider this sort of training, which merely involves product knowledge and certain communications skills, as involving discretion and independent judgment. This would be the case whether the IC taught from training manuals, handouts, PowerPoint presentations, or simply relied on his/her knowledge and experience.

Mr. Hepburn tried to argue that this training involved discretion and judgment because the IC is on his/her own in front of the class and has to assess how the training is going and whether the knowledge is being successfully transferred. The IC might have to decide to go over some information again. He also contends that discretion and judgment may be used because some of the employees being taught are opposed to the decision to adopt new software, and may be resistant.

Such issues are common to virtually every training scenario, and do not change the USDOL/WH position that such training is a matter of product knowledge and skill.

In addition, questions can come up which may identify problems which have to be brought to the attention of the developers or project managers, and Mr. Hepburn suggests that the decision as to which of such questions should be forwarded, and when, is discretionary. Again, however, those decisions are determined by the IC's knowledge of the product and the employer's procedures.

Q. What if there was a situation where the customer's employees who you were training were not picking up on the training such that the training was not on time? Would you discuss with the project manager the need to have additional training?

A. Yes, I would definitely pass that type of information along.

Q. And then I guess it was up to the project manager to work that out with the client?

A. And it also always depended on the contract. Whatever contract the customer had with Tyler they were allowed so many hours of implementation or billable days of implementation. So if it fell within that parameter—otherwise there would be an additional charge to the customer. So it all had to be worked around. I didn't do any of that. I just passed the information along. (Meyers deposition, p. 59, l. 14 – p. 60, l. 8)

Another IC:

Q. So you made a decision whether or not it needed to be brought to the project manager's assistance right then or there or whether it could wait to be done later, after you left for your hotel?

A. If it didn't interrupt my training, then I continued on with my training, and I contacted them later.

Q. But you made that decision as to when you were going to contact your project manager?

A. Depending on the importance of the—of the—I mean, if we're missing names, obviously I can't train without names.

Q. Right.

A. If I'm missing a ZIP code I can train without a ZIP code. (Steele deposition, p. 102, l. 21 – p. 103, l. 10)

The final duties which Mr. Hepburn identifies are assisting with the “go live” transition and with post go live support. These functions merely involve answering questions about the software as it is configured and adapted to the particular client's procedures. Often it involves going over while on site during the go live the same material the IC taught to the client's employees earlier during the site visit, which they may not have fully absorbed or which they may simply have forgotten. Post go live support is answering such questions after the IC has left the site. These duties clearly require general product knowledge and specific knowledge of how the software has been configured to work for that particular client, not discretion and independent judgment.

As noted above, 29 CFR 541.202(b) lists a number of functions which can involve the exercise of discretion and independent judgment. Now that we have

reviewed the duties of the IC's, it would be useful to compare them to the list in 541.202(b).

- IC's do not have authority to formulate, affect, interpret, or implement management policies or operating practices. Their work has nothing to do with management policies or practices.

- they do not carry out major assignments in conducting the operations of the business. Rather, they are part of a team providing a product/service to customers.

- their work does not affect business operations to a substantial degree. Their failures might cost the company money by disappointing or offending a client, but that does not signify that they use discretion and independent judgment (see 541.202 (f)).

- they do not have authority to commit the employer in matters that have significant financial impact.

- they do not have authority to waive or deviate from established policies and procedures without prior approval.

- they do not have authority to negotiate and bind the company on significant matters.

- they do not provide consultation or expert advice to management.

- they are not involved in planning long- or short-term business objectives.

- they do not investigate and resolve matters of significance on behalf of management.

- they do not represent the company in handling complaints, arbitrating disputes or resolving grievances.

Even if the IC's duties could be construed to meet one of these factors, and I contend they cannot, that would not be sufficient. An October 26, 2006 Opinion Letter reminds us that:

As the preamble to the final rule explained, federal courts generally conclude that employees who meet at least two or three of the indicators mentioned in 29 C.F.R. § 541.202(b) are exercising discretion and independent judgment, although a case-by-case analysis is required. *See* 69 Fed. Reg. at 22,143.

OPINION LETTERS

Until quite recently, USDOL/WH would, from time to time, issue Administrator's Opinion Letters in response to questions from the public. These letters expressed the opinions, interpretations, or enforcement positions of USDOL/WH with regard to specific matters. There are very few opinion letters which deal with employees performing duties similar to those of the plaintiffs, and those there are do not analyze the specific issue of the exercise of discretion and independent judgment in great depth.

Nevertheless, I am aware of no instance in which the agency has found employees with duties similar to those of the plaintiffs to be exercising discretion and independent judgment, or to be exempt.

An October 26, 2006 Opinion Letter addressed the exempt status of an IT Support Specialist under both the administrative and computer professional exemptions. The letter stated that:

...testing by various systematic routines to see that a particular...computer application is working properly according to the specifications designed by others are examples of work that lacks the requisite exercise of discretion and independent judgment within the meaning of the administrative exemption. Employees performing such activities are using skills and procedures or techniques acquired by special training or experience. Their duties do not involve, with respect to matters of significance, the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered as required by 29 C.F.R. § 541.202(a).

The letter also points out that a Sixth Circuit case held that (inter alia) configuring hardware and software is not an exempt function:

See Martin v. Ind. Mich. Power Co., 381 F.3d 574, 581-84 (6th Cir. 2004) (IT Support Specialist responsible for installing and upgrading hardware and software, configuring desktop computers, and testing and troubleshooting equipment is not exempt as administrative employee under pre-2004 regulations because such work is not directly related to management policies or general business operations and is not of substantial importance to management or operation of the business)....

The October 26 letter also refers to an August 19, 1999 Opinion Letter. That letter addresses employees with duties very similar to those of the plaintiffs:

This is in response to your letter requesting an opinion regarding the application of the FLSA to individuals employed as customer training consultants (CTCs). You ask whether the CTCs would qualify as either exempt administrative employees or exempt computer professional employees.

The CTCs are employed in your client's information management firm. The firm engages in, among other things, the installation of computer systems and customer training on the installed software. CTCs provide training to employees on customers' specialized computer software; manipulate and modify software settings and specifications (e.g. toolbars

and setup) to fit and respond to customer needs (does not include program writing or software developing); install, debug, troubleshoot, and convert data from old systems to the new conversions; test customers' moderns; and conduct customer follow-up visits to ensure customer satisfaction.

You state that CTCs are paid a salary of approximately \$ 26,000 to \$ 27,000. Some CTCs have bachelors' degrees in a business or technical discipline, and others have a strong industry, technical or business background.

Section 13(a)(1) of the FLSA provides a complete [*2] minimum wage and overtime exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Regulations, 29 CFR Part 541 (copy enclosed). An employee may qualify for exemption if all the pertinent tests relating to duties, responsibilities and salary, as discussed in the appropriate section of the regulations, are met.

An employee who is paid on a salary or fee basis of at least \$ 250 per week may qualify for exemption as a bona fide administrative employee if the employee's primary duty is office or nonmanual work directly related to management policies or general business operations of his/her employer or his/her employer's customers, and the employee's work requires the exercise of discretion and independent judgment.

Under section 541.205 of the regulations, activities that are "directly related to management policies or general business operations" of an employer are those relating to the administrative operations of a business. The exemption is limited to employees who perform work of substantial importance to the management or operation of the employer's business. The administrative operations of the business [*3] include white collar employees engaged in servicing a business. Examples of such activity include advising the management, planning, negotiating, representing the company, and business research. The phrase "directly related to management policies or to general business operations" include those whose work affects policy or whose responsibility it is to carry it out. This includes employees who are advisory specialists and consultants of various kinds.

Based on the information in your letter, it is our opinion that the CTCs would not qualify as bona fide administrative employees. These individuals perform technical tasks, which do not constitute making or implementing policy, or the performance of management functions, necessary for the application of the exemption.

This letter, while it concludes that employees quite similar to plaintiffs are not exempt, bases its conclusion more explicitly on the previous regulations requirement that the primary duty of administrative employees be directly related to management policies or general business operations rather than the requirement for the exercise of discretion and independent judgment. It is significant, of course, that it does not support the notion that the CTC's under discussion exercise discretion and independent judgment. Moreover, the October 26, 2006 letter cites this August 19, 1999 letter for a conclusion that IT Support Specialists don't exercise discretion and independent judgment:

Their duties do not involve, with respect to matters of significance, the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered as required by 29 C.F.R. § 541.202(a). *See Wage and Hour Opinion Letter August 19, 1999 (copy enclosed).*

Thus the August 19, 1999 letter does support my opinion that duties such as those of the plaintiffs do not involve the exercise of discretion and independent judgment.

CONCLUSIONS

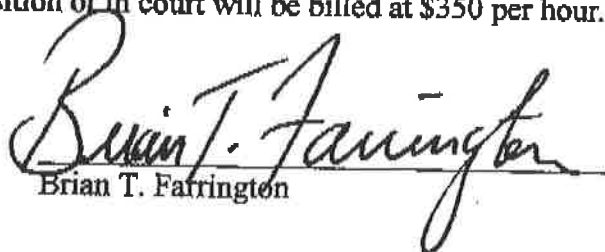
Based on my education, training and experience, it is my opinion that the duties of the IC's did not involve the exercise of discretion and independent judgment. Rather, they involved product knowledge, following prescribed policies, procedures, and guidelines, and the use of skill and experience. While there were some variations in the duties of the plaintiffs, none of these differences were significant enough to prevent me from reaching the conclusion that all the plaintiffs whose depositions I read did not exercise discretion and independent judgment. As a USDOL/WH investigator and supervisor, I routinely made decisions about whether the duties of a group of employees were sufficiently similar that I could reach a conclusion about the entire group, and in this case it is my conclusion that the duties of plaintiffs were sufficiently similar that I could conclude that they did not exercise discretion and independent judgment.

I am aware that there will be additional depositions and discovery in this case. I therefore reserve the right to supplement and/or amend my report accordingly.

COMPENSATION

I am billing \$300 per hour for all work on this case other than testimony, plus reasonable expenses. Testimony in deposition or in court will be billed at \$350 per hour.

Dated: September 3, 2010


Brian T. Farrington

**AMENDED EXPERT REPORT OF BRIAN T.
FARRINGTON**



AMENDED EXPERT REPORT OF BRIAN T. FARRINGTON IN *BEALL, et al. v. TYLER TECHNOLOGIES, INC., AND EDP ENTERPRISES, INC.*

I was retained by Sloan, Bagley, Hatcher & Perry Law Firm, to provide a professional opinion on whether the job duties and responsibilities of the plaintiffs and other employees alleged to be similarly situated in this case require the exercise of discretion and independent judgment according to the standards applied by the U.S. Department of Labor, Wage and Hour Division ("USDOL/WH").

BACKGROUND

I was employed by the United States Department of Labor, Wage and Hour Division ("Wage and Hour") from 1975 to 1989, with 18 months off for graduate school. From 1975 to 1984, I was a Compliance Officer (an investigator) in Chicago, Illinois and then in Fort Worth, Texas. My primary function was to enforce the laws administered by the Wage and Hour Division, primarily the Fair Labor Standards Act ("FLSA"). I conducted anywhere from 500 to 600 full investigations during this time, as well as 300 to 400 more limited compliance actions. From 1984 to 1989 I was the Assistant District Director in Dallas (the position is now called "Director of Enforcement"). I supervised from 12 to 16 investigators in this position. I assigned them their cases, assisted and advised them during the conduct of their investigations, and reviewed their completed case files. During this review, I evaluated whether the evidence supported the investigators' findings and conclusions and whether the FLSA had been properly applied. I determined whether claimed and/or potentially applicable exemptions had been correctly found to be applicable or not. I also reviewed the interviews conducted by the investigator to see if they supported the investigator's findings adequately. When back wages were computed, I reviewed those computations for both accuracy and proper methodology.

When the investigator was unable to resolve outstanding issues, I met with employers and/or their attorneys in second level conferences to attempt to settle the cases. If no resolution acceptable to the agency could be reached, I made the decision whether a file was suitable to send to the Regional Solicitor of Labor with a recommendation for litigation. If litigation was recommended, I ensured that conclusions were sound and supported by the evidence, and commented on additional factors such as evidence of willfulness. I estimate that I supervised approximately 5,000 investigations while I was Assistant District Director.

I left the Department of Labor in 1989 and went into private consulting on wage and hour and other labor matters with a consulting firm called Harry Weisbrod Associates, which I have since purchased. I also attended law school after leaving the Department of Labor and received my J.D. from the Texas Wesleyan School of Law and was licensed to practice law in 1994. My law practice consists almost exclusively of representing and advising clients in wage and hour and EEOC matters. When appearing

as an expert witness, I have been engaged by both plaintiffs and defendants. I also do many speeches, seminars and training programs on FLSA and other employment issues.

Since 1989, I have spent a substantial portion of my time in dealing directly with USDOL/WH while representing clients in investigations. I also maintain professional relationships with a number of agency personnel, and discuss developments in the law and in agency policies, procedures, and interpretations of the law with them. I am therefore up to date on the agency's policies, procedures, interpretations, and enforcement positions. In addition, I keep myself informed on developments in the statutes enforced by USDOL/WH, especially the FLSA, and in relevant regulations and opinions. I also keep up with FLSA case law. I apply this knowledge continuously in advising employers on wage-hour issues and representing them in USDOL/WH investigations. I continue to publish on such issues, as noted below.

DATA AND OTHER INFORMATION CONSIDERED IN FORMING OPINIONS

1. Depositions of Talina McElhaney, Lisa White, Linda Carrington, Russell Steele, Melanie Baird, Tony Dodd, Eric Emde, Lorraine Mutch, Eyvonne Wilton, Thomas O'Haver, Joy Bibles McLeod, David Hayner, Sandra Dunning, Kelly Hampton, Bethany Maynard, Joy Flynn, Titus Britt, Geraldine Ingram, Travis Void, Ilene Meyers, Christopher Hepburn.
2. Declarations of Kim Huynh, Talina McElhany, Lisa White, Kelly Hampton, Tony Dodd, Ilene Meyers, Tom O'Haver, Joy Bibles.
3. Plaintiffs' First Amended Collective Action Complaint
4. Defendants' Answer to Plaintiffs' First Amended Collective Action Complaint
5. Chart of IS Plaintiffs by Division and job duties

OTHER CASES IN WHICH I HAVE TESTIFIED AS EXPERT IN AT LEAST THE LAST FOUR YEARS

1. United States District Court for the Northern District of Georgia, Rome Division, Case No.: 4:99-CV-0001-HLM (*McDermott, et al. v. Cracker Barrel Old Country Store, Inc.*). Expert for Plaintiffs on compensability of lock-in time, and payment of minimum wage for side work. Deposition.
2. United States District Court for the District of Oregon, Case No. MDL Docket No. 1439, (*In re: Farmer's Insurance Exchange Claims Representatives' Overtime Pay Litigation*). Witness for Defendant re: claims representatives in FLSA case. [Note: gave no opinion testimony, but reported on results of test sample claims.] Trial testimony.

3. District Court, City and County of Denver, Case No. 01CV4773 (*Chase v. Farmer's Insurance Exchange, Inc.*) Expert for Defendant re: exercise of discretion and independent judgment by claims representatives in Colorado wage and hour case. Deposition.
4. District Court, Fourth Judicial District, State of Minnesota, County of Hennepin, Court File EM 01-015004 (*Milner, et al. v. Farmers Insurance Exchange, et al.*), Expert for Defendant re: exercise of discretion and independent judgment by claims representatives in Minnesota wage and hour case. Deposition.
5. United States District Court for the Western District of Texas, Case No. EP-02-CA-0564-FM (*Acosta v. County of El Paso*), Expert for Defendant re: off clock hours allegedly worked by detention officers, and offset of off-clock hours by paid lunch period. Deposition.
6. United States District Court for the Northern District of Alabama, Western Division, Civil Action No. CV-01-C-0303-W, (*Morgan et al. v. Family Dollar Stores, Inc.*) Expert for the Plaintiffs re: application of the executive exemption. Deposition.
7. United States District Court for the District of Arizona, Case No. CIV03 2262 PHX ROS (*Hutton v. Bank of America*), Expert for Defendant re: administrative exemption, back wage computation, willfulness. Deposition.
8. Judicial Court, 49th Judicial District, Webb Co., Texas, Case No. 2003 CV F000553D1, (*The Laredo National Bank and Homeowners Loan Corporation v. Jacob Monty and the Monty Law Firm, P.C.*) Expert for Defendant re: reasonableness of attorney's opinion on administrative exemption. Deposition.
9. United States District Court for the Southern District of Florida, Case No. 04-22640 CIV-JORDAN (*Garcia v. Port Royale Trading Co., Inc., et al.*). Expert for Defendant re: back wage calculation. Deposition.
10. United States District Court for the Northern District of Alabama, Southern Division, Case No. CV-02-TMF-1174-S (*Chao v. Tyson Foods, Inc.*), Expert for Defendant re: willfulness. Deposition.
11. United States District Court for the Northern District of Alabama, Western Division, Case No. 7:06-CV-01538-LSC (*Womack v. Dolgencorp, Inc., et al.*), Expert for Plaintiffs re: executive exemption. Deposition.
12. Long John Silver

PUBLICATIONS

1. Wage-Hour Compliance. Authored book published 1995 by Warren, Gorham and Lamont, NY, NY.
2. Wage Hour and EEOC Compliance and Litigation Prevention. Published 1991 by the Professional Development Institute at the University of North Texas, Denton, TX. Authored training manual for all day course on the subject.
3. A CPA's Guide to Workplace Regulation. Published 2000 by the American Institute of CPA's. Training manual for an all day course on the subject.
4. Society for Human Resource Management, "Legal Report" on the 1996 FLSA Amendments.
5. I wrote several articles for "Payroll Perspectives," a newsletter published by Ernst and Young.
6. I wrote several articles for "Auto, Inc.," a magazine published by the Automotive Service Association.
7. I wrote several articles for "Self Storage," a magazine published by the Self Storage Association.
8. Harry Weisbrod Associates previously published a bi-monthly newsletter in which I wrote regularly.
9. I have written other articles for industry groups over the years that I have not kept track of.
10. A Wage and Hour Guide for the Self Storage Industry. Published 2006 by the Self Storage Association, Alexandria, Virginia. Review of FLSA requirements and of major state wage and hour law considerations as they apply to employers in the self storage industry.

OPINIONS AND BASIS

METHODOLOGY

The principal method which USDOL/WH enforcement personnel use to make determinations on the application of the administrative exemption (among others) is to conduct interviews with employees in the job or jobs at issue. USDOL/WH investigative procedure is for the investigator to select employees from among current and former incumbents in the jobs at issue, and to interview them either in person or by telephone

and obtain from them information about their job duties and responsibilities. There are no hard and fast rules on the number or distribution, geographic or organizational, of employees to be interviewed. The investigator is to interview enough employees to allow him to feel confident that he has a good understanding of what the employees in the subject jobs do.

In this case I was able to read a number of depositions of opt-in Plaintiffs, which included, among other things, their accounts of their duties and responsibilities. In addition, I read the deposition of the person deemed by the defendants to be most knowledgeable concerning the duties and responsibilities of the plaintiffs, so that I could get the employer's perspective.

The opinions I express in this report are of the same type that I would have developed in my work for the USDOL/WH, and subsequently in advising clients on wage and hour issues. I hold all of my opinions to a reasonable degree of certainty in my field. The work I have done and the methods I used in this case are the same type of work that I did while employed at USDOL/WH and use the method I used at the agency when addressing possible overtime violations. I was as careful in performing the work in this case as I was when at USDOL/WH, and in my normal professional activities.

DISCRETION AND INDEPENDENT JUDGMENT

The Fair Labor Standards Act of 1939, as amended (29 U.S.C. §§ 201 et seq.) (hereinafter "FLSA" or the "Act") generally requires that employees be paid overtime when they work in excess of 40 hours in a workweek, unless an exemption applies. There are, however, a number of exemptions from the overtime requirements of the Act. The most important of these exemptions is the exemption from minimum wage and overtime contained in Section 13(a)(1) of the Act (29 U.S.C. 213(a)(1)) for bona fide executive, administrative, and professional employees, and outside salespeople. The statute itself does not define the terms "executive," "administrative," "professional," or "outside sales," however. Rather, the statute authorizes the Secretary of Labor to define and delimit those terms by appropriate regulation. The regulation in which these terms are defined and delimited is 29 CFR 541.

From the materials and information available to me, employees like Plaintiffs did not supervise other employees, nor were they engaged in work requiring knowledge of an advanced type in a field of science or learning, nor were they involved in sales activities. Therefore, the executive, professional, and outside sales exemptions could not be applicable to them, leaving the administrative exemption.

There are several elements to the administrative exemption in addition to the performance of some work requiring the exercise of discretion and independent judgment, but I have not been asked to opine on those elements. I have been asked to review the duties and responsibilities of employees included in this action and give an opinion as to whether, under the standards applied by the USDOL/WH, the work of the plaintiffs does, in fact, require the exercise of discretion and independent judgment.

The current regulation defines discretion and independent judgment as follows:

In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed. 29 CFR 541.202(a).

The regulation continues:

(b) The phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

It is true that the exercise of discretion and independent judgment does not require that employees make final decisions. Rather, employees who make recommendations can meet the regulatory requirement, as long as their recommendations are given particular weight. However, the recommendations must themselves involve the exercise of discretion and independent judgment.

On the other hand:

(e) The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources. *See also* § 541.704 regarding use of manuals. The exercise of discretion and independent judgment also does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive,

recurrent or routine work. An employee who simply tabulates data is not exempt, even if labeled as a "statistician."

(f) An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly....

This standard is not significantly different from the standard in the previous (i.e., prior to August 23, 3004) version of the regulation, which stated that discretion and independent judgment:

...[involving] the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term as used in the regulations in subpart A of this part, more over, implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance....

Further, both prior enforcement positions of USDOL/WH and prior court cases on this issue remain relevant—as the Preamble to the current regulation states:

Accordingly, while retaining this standard from the existing regulations, final section 541.202 clarifies the definition of discretion and independent judgment to reflect existing federal case law and to eliminate outdated and confusing language in the existing interpretive guidelines. The Department intends the final rule to clarify the existing standard and to make the standard easier to understand and apply to the 21st Century workplace.

Final section 541.202(a) thus restates the requirement that the exempt administrative employee's primary duty must "include" the exercise of discretion and independent judgment and includes the general definition of this term, taken word-for-word from the existing interpretive guideline at subsection 541.207(a): "In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered." 69 FR 22142

CATEGORIES OF EMPLOYEES INVOLVED

I have been asked to look at Implementation Consultants. According to the deposition testimony, these kinds of employees are/have also been referred Implementation Specialists, and Client Liaison at various times and in different divisions of the defendants. In addition, the duties of employees known as Trainers performed duties similar to employees with the other titles mentioned above, although Trainers may

not have done all the functions that the other employees did. In any event, I will refer to the position(s) in question as Implementation Consultants, or "IC's."

APPLICABLE STANDARDS

REGULATIONS

Since this action was filed in May, 2009, and since the maximum statute of limitations under the FLSA is three years, the applicable regulatory standard is the current version of 29 CFR 541, which has been in effect since August 23, 2004.

DUTIES OF IC'S

According to Christopher Hepburn, who is the person designated by the defendants as most knowledgeable about the duties of the plaintiffs, the primary duties involved in the implementation process would be:

- analyze clients' current business practices
- determine any changes to business practices
- configure software to "adhere to" the changed business practices
- review configuration with clients
- receive client acceptance
- review conversion files
- load conversion files
- educate senior staff and other staff on the particular Tyler Technologies' application in question
- assist with the "go live" transition
- assist with post-go live support

(see Hepburn deposition, p. 20, line 22 – p. 21, l. 7).

The testimony of the IC's includes most of these duties, although their descriptions or characterizations of the functions often differ from those of Mr. Hepburn. In any event, none of the functions listed by Mr. Hepburn would involve the exercise of discretion and independent judgment as that term is used in the regulations. Rather, they involve product knowledge, and the use of skill in applying well-established techniques, procedures or specific standards. I will examine each in turn.

The analysis of clients' current business practices was simply the determination of what particular steps, processes, forms, etc., the client was using, so that the defendants could adapt their software to allow the client to carry out its functions. It primarily involved questioning client employees. This "analysis" was simply information gathering, in light of the gatherers' knowledge of what the software did. Combined with questions about what the client was currently doing was what changes the

client might want to make. It is important to note, however, that this did not involve advising the client on what they should do. Rather, it was simply ascertaining what they did do, and what they wanted to do. As Mr. Hepburn put it:

- A. We'll take accounts payable [as an example]. They have a choice whether they would like to centralize accounts payable functions of decentralize accounts payable functions....
- Q. Okay. And would you tell the client which on they should do?
- A. No. my role was to explain the division—the divisions, the pros of one the cons of one, pros of the other , cons of other. Ultimately, it's their decision. My role would be to offer—
- Q. Options?
- A. --options and the detailed analysis of those options backup not a recommend. (Hepburn deposition, p. 22, ll. 17 – p. 23, l. 5)

This sort of process in this sort of setting, knowing what questions to ask, how to follow up on those questions to elicit the information needed to implement the defendants' software, has always been treated by USDOL/WH as a skill, not the exercise of discretion and independent judgment. In addition, in many cases this sort of function is performed by solely or primarily by project managers rather than by IC's:

- Q. Did you as an implementation consultant—I'm sorry—implementation specialist at Tyler ever undertake an analysis of what the client needs and wants—similar to how you described the project manager typically does?
- A. No. That was the project manager's duties. (Meyers' deposition, p. 48, ll. 2 – 7).

In addition, in some cases checklists were used:

- Q. All right. So during this initial call you would gather information about the existing customer's data?
- A. Yes.
- Q. And how would you know what questions to ask?
- A. We had a list, a checklist more or less, of questions that we had to ask and answer and check off as they answered them. (McElhany deposition, p. 54, ll. 11 – 18)

Thomas Dodd says:

Q. It is titled Implementation Checklist 1.9, correct?

A. Correct.

* * * *

Q. Okay, what is it?

A. It looks like just a checklist for what we did to go through for implementation.

Q. Do you recognize the document?

A. I do. There is numerous versions of this, but it is a general outline of how to do...how to stage software and whatnot.

Q. So you would use that at the configuration staging?

A. In the staging phase of the implementation.

Q. Did you ever use this in connection with your job?

A. Oh, certainly. This, or a more modern version.

Q. Is this a document that is tailored to a particular project?

A. No. It just happened to be one that I printed out. I mean, they had a lot of documents similar to this available on line, on the Internet. (Dodd deposition, p. 44, l. 17 – p. 46, l. 23

And Mr. Hepburn acknowledges that what an IC offers is not a recommendation, but a set of options (Hepburn deposition, p. 22, ll. 17 – p. 23, l. 5) (and those options, of course, are only those contained in the software, not invented by the project manager or IC).

The point that Mr. Hepburn made, that the IC's don't make recommendations, but rather offer options, was echoed by the IC's. For example:

Q. Do you make recommendations based on past experience as an implementation specialist? (objection omitted)

A. No, you try not to.

Q. Not at all?

A. No.

Q. Why not?

A. Because every county is different, and they know what they want, and they've got their own culture and their own thing.

Q. What if they asked you?

A. You just explain to them that it's—I'll tell you how it works, but I'm not going to tell you how to run your office.
(Carrington deposition, p. 109, ll. 11 – 24)

Next, Mr. Hepburn says, the defendants' software had to be "configured"—that is, the particular options contained within the software which the client had chosen had to be activated. For instance, if a deputy court clerk was supposed to have access to one set of files, while the clerk himself or herself had to have access to all files, the software had to be set to allow the appropriate level of access. The actual technical process of adjusting the software might be done by a developer/programmer if it was complex, or by an IC. In either case, however, this does not entail the exercise of discretion and independent judgment. The client has determined who gets what level of access. The software has the ability to be set to provide the determined level of access. It's simply a matter of skill and product knowledge to set or configure the software to assign the determined level of access. Indeed, Mr. Hepburn himself, describing the process (in terms of financial software), said that once the client's parameters had been determined, actually configuring the software was "filling out data tables." (p. 28, l. 20 – p. 30, l. 21).

Mr. Hepburn referred to reviewing the configuration with clients. During both testing and training, the IC's would review what the software did in any particular situation with the client to ensure that it was functioning properly and doing what the client wanted it to do. He described it as building tables and then showing the client an example (p. 36, l. 4 – 19), a "dry run." Again, this is routine and does not involve discretion and independent judgment:

Q. As you work through the different variables or nuances for this particular client and you configure it to their system, you said you then give them sort of a task list?

A. Yes, Ma'am.

Q. How do you come up with that task list?

A. The task list is already preformed [sic] by the packaging of these implementation packages of to do's and the structure of

things you have. You give the agenda to the client. We have this list of things that we're supposed to do, and we present that to the client. We have these things that we implement from tried and true implementation guide, and that's what—

Q. Like what kind of thing? Is it like a recipe where you say I need to tell you now that you need to---

A. Yes, Ma'am. It's pretty much a recipe. (Bibles McLeod deposition, p. 97, l. 19 – p. 98, l. 11).

Mr. Hepburn mentions client acceptance, which he describes merely as getting a “green light” from the client to move forward, based on the “dry run” examples.

The next duties discussed by Mr. Hepburn are reviewing conversion files and loading conversion files. This involves the client identifying the files they want to be transferred electronically to the new software, rather than having to enter the data manually, and then actually transferring that data to the new software. The purely technical aspects of accomplishing this were done by the programmers:

A. We don't—the implementation person is not really converting data as much as they are checking to make sure data has been converted properly.

Q. But that's part of the conversion process?

A. Yes.

Q. Who is doing the actual data conversion, the programmer?

A. Yes. (Carrington deposition, p. 98, ll. 17 – 24).

Another IC said:

A. I didn't do the conversion.

Q. Yeah. Who would have?

A. I guess the developers. (Steele deposition, p. 93, ll. 10 – 12).

The IC's would review the results with the client, identify any problems and notify the programmers so that these problems could be fixed, review again until it appeared that the data had been successfully converted to the new software.

A. Once you have given that to the programmer he'll run the initial conversion through the conversion process. And then

he would either come and tell us it completely bombed, and this is what I think is wrong, so gather X, Y, Z information from the customer, or if they had good, clean data, he might could tell you specific areas that needed attention. So you would go back to your customer and say, I need you to do this, this, and this. (McElhaney deposition, p. 62, ll. 6 – 14).

Neither the determination of errors nor their correction was discretionary:

Q. What did you do to verify the customer's data after it was converted?

A. I would compare—once the conversion programmer had gotten a clean enough run through the conversion that he could actually populate the EDPro database, then we would compare certain areas in the Unix data to areas in the EDPro data. I believe I mentioned earlier about once you got to the point where you had data in the database, you could actually run error reports in EDPro, and it would tell you there was missing data here and stuff like that, and then you could go back and look at the Unix data and see why it was missing.

Q. So were these error reports—you would run error reports?

A. It was part of the EDPro program.

Q. Would it happen automatically, or would you have to generate the report?

A. You'd just click a button. (McElhaney deposition, p. 76, l. 19 – p. 79, l. 12).

Nothing the IC's do in this process requires the exercise of discretion and independent judgment. The client identifies the data which must be transferred. The transfer itself is a technical process. The results are either right or wrong—the identified data is either successfully transferred or it is not.

At one point Mr. Hepburn tries to argue that discretion and judgment are used in the conversion process because the IC is "recommending" which data should be converted. After a rather lengthy discussion, though, he ultimately concedes that:

The client would just as soon convert everything because it means less work for them. It's the implementation consultant's job to give them the pros and cons of their decisions that they choose to make meaning I could—an implementation consultant could tell their client we convert

you will have more work to do than if we don't convert. Then that implementation consultant articulates with certainty and conviction why converting data means more work for the client when it would clearly simplistically seem to anyone the converting data would mean less work for a client. It's their—and ultimately the client can still choose hey I want to go down that path and then the implementation consultant lives with that decision and executes. (p. 117, l. 15 – p. 118, l. 4)

The next IC duty identified by Mr. Hepburn is training—educating staff about how to use the software. For most of the IC's, this was the largest or one of the largest components of their duties. And again, there was nothing about the training that required discretion or independent judgment. The software operates the way it operates, and the IC's were familiar with it. They would simply show the client's employees how to perform the operations of their departments using the software. Some IC's used training manuals or guidelines, which they themselves did not design or prepare ("Prepare appropriate training materials as new products are developed, didn't have anything to do with writing training documentation" (Bibles McLeod deposition, p. 90, l. 14 – 16)), which included instructions and screen shots of what the client's employees would see while using the software:

A. Well, they each have a computer, and they each have Odyssey on their computer, and we also had—we had training manuals with screen shots. (Carrington deposition, p. 111, l. 15 – 17.

And another IC:

Q. Was there anything—what were the handouts that you would provide?

A. They were documents provided by Tyler that were instructions sheets on—it essentially covered what we were covering in the classroom.

Q. Okay. Did you determine the agenda for the training in the sense of what particular topics to cover with the employees?

A. No. That was pretty predetermined, you know. It was provided, like I said, in the examples and then I went by the example of the guy that trained me.

Q. When you say examples, what do you mean?

A. Shauna would send out a training template and say here is what we did in such and such county, you know, go by this. And I would go by that training schedule. (Dodd deposition, p. 39, l. 22 – p. 40, l. 12).

Another IC:

A. The only thing I would receive is what module I was teaching. And then I would have the material that was developed by MUNIS or Tyler—whoever—the training material I would have that training material to use.

Q. And what—when you say training material, to what do you refer?

A. It's just a manual for each of the modules. (Meyers, p. 45, l. 6 – 13).

Other IC's had their teaching material "in their head":

Q. You didn't prepare anything that prepared you for the actual training? It was all in your head?

A. Yes.

Q. And when you got there with the personnel, again, you didn't have a document, an agenda, item numbers 1 through 10, going across and checking those off, or did you?

A. I don't recall.

Q. Now, when you were teaching them as to how to enter the citations, did you have a document with you that you would flip through and read in order to try to train them? Or again, it was all your knowledge that you were training them on?

A. Right. Previous experience with the software. (Steele deposition, p. 52, l. 20 – p. 53, l. 8)

IC's had no authority to deviate from the prescribed training:

A. Well, I didn't deviate from the Tyler plan. I had to stay with that, because that's duplicatable, so everything was based on that.

Q. What Tyler plan are you talking about?

A. The Tyler training plan for whatever module we were implementing, because the whole idea is if something happened to me, somebody else had to pick up right where I

left off, and people couldn't be told something different or be confused by that.

Q. But the plan, is that like a customer hand-out? Is that something you're giving to the client?

A. Yeah. There's a training guide. There's an instruction manual. Everything has to be duplicatable, so whatever it was, it had to stay with that. So if I was working with a client, that was always the foundation to keep that duplicatable. (Bibles McLeod deposition, p. 119, l. 5 – 21).

USDOL/WH does not consider this sort of training, which merely involves product knowledge and certain communications skills, as involving discretion and independent judgment. This would be the case whether the IC taught from training manuals, handouts, PowerPoint presentations, or simply relied on his/her knowledge and experience.

Mr. Hepburn tried to argue that this training involved discretion and judgment because the IC is on his/her own in front of the class and has to assess how the training is going and whether the knowledge is being successfully transferred. The IC might have to decide to go over some information again. He also contends that discretion and judgment may be used because some of the employees being taught are opposed to the decision to adopt new software, and may be resistant.

Such issues are common to virtually every training scenario, and do not change the USDOL/WH position that such training is a matter of product knowledge and skill.

In addition, questions can come up which may identify problems which have to be brought to the attention of the developers or project managers, and Mr. Hepburn suggests that the decision as to which of such questions should be forwarded, and when, is discretionary. Again, however, those decisions are determined by the IC's knowledge of the product and the employer's procedures.

Q. What if there was a situation where the customer's employees who you were training were not picking up on the training such that the training was not on time? Would you discuss with the project manager the need to have additional training?

A. Yes, I would definitely pass that type of information along.

Q. And then I guess it was up to the project manger to work that out with the client?

- A. And it also always depended on the contract. Whatever contract the customer had with Tyler they were allowed so many hours of implementation or billable days of implementation. So if it fell within that parameter—otherwise there would be an additional charge to the customer. So it all had to be worked around. I didn't do any of that. I just passed the information along. (Meyers deposition, p. 59, l. 14 – p. 60, l. 8)

Another IC:

- Q. So you made a decision whether or not it needed to be brought to the project manager's assistance right then or there or whether it could wait to be done later, after you left for your hotel?
- A. If it didn't interrupt my training, then I continued on with my training, and I contacted them later.
- Q. But you made that decision as to when you were going to contact your project manager?
- A. Depending on the importancy of the—of the—I mean, if we're missing names, obviously I can't train without names.
- Q. Right.
- A. If I'm missing a ZIP code I can train without a ZIP code. (Steele deposition, p. 102, l. 21 – p. 103, l. 10)

The final duties which Mr. Hepburn identifies are assisting with the “go live” transition and with post go live support. These functions merely involve answering questions about the software as it is configured and adapted to the particular client's procedures. Often it involves going over while on site during the go live the same material the IC taught to the client's employees earlier during the site visit, which they may not have fully absorbed or which they may simply have forgotten. Post go live support is answering such questions after the IC has left the site. These duties clearly require general product knowledge and specific knowledge of how the software has been configured to work for that particular client, not discretion and independent judgment.

As noted above, 29 CFR 541.202(b) lists a number of functions which can involve the exercise of discretion and independent judgment. Now that we have

reviewed the duties of the IC's, it would be useful to compare them to the list in 541.202(b).

- IC's do not have authority to formulate, affect, interpret, or implement management policies or operating practices. Their work has nothing to do with management policies or practices.

- they do not carry out major assignments in conducting the operations of the business. Rather, they are part of a team providing a product/service to customers.

- their work does not affect business operations to a substantial degree. Their failures might cost the company money by disappointing or offending a client, but that does not signify that they use discretion and independent judgment (see 541.202 (f)).

- they do not have authority to commit the employer in matters that have significant financial impact.

- they do not have authority to waive or deviate from established policies and procedures without prior approval.

- they do not have authority to negotiate and bind the company on significant matters.

- they do not provide consultation or expert advice to management.

- they are not involved in planning long- or short-term business objectives.

- they do not investigate and resolve matters of significance on behalf of management.

- they do not represent the company in handling complaints, arbitrating disputes or resolving grievances.

Even if the IC's duties could be construed to meet one of these factors, and I contend they cannot, that would not be sufficient. An October 26, 2006 Opinion Letter reminds us that:

As the preamble to the final rule explained, federal courts generally conclude that employees who meet at least two or three of the indicators mentioned in 29 C.F.R. § 541.202(b) are exercising discretion and independent judgment, although a case-by-case analysis is required. *See* 69 Fed. Reg. at 22,143.

OPINION LETTERS

Until quite recently, USDOL/WH would, from time to time, issue Administrator's Opinion Letters in response to questions from the public. These letters expressed the opinions, interpretations, or enforcement positions of USDOL/WH with regard to specific matters. There are very few opinion letters which deal with employees performing duties similar to those of the plaintiffs, and those there are do not analyze the specific issue of the exercise of discretion and independent judgment in great depth.

Nevertheless, I am aware of no instance in which the agency has found employees with duties similar to those of the plaintiffs to be exercising discretion and independent judgment, or to be exempt.

An October 26, 2006 Opinion Letter addressed the exempt status of an IT Support Specialist under both the administrative and computer professional exemptions. The letter stated that:

...testing by various systematic routines to see that a particular...computer application is working properly according to the specifications designed by others are examples of work that lacks the requisite exercise of discretion and independent judgment within the meaning of the administrative exemption. Employees performing such activities are using skills and procedures or techniques acquired by special training or experience. Their duties do not involve, with respect to matters of significance, the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered as required by 29 C.F.R. § 541.202(a).

The letter also points out that a Sixth Circuit case held that (inter alia) configuring hardware and software is not an exempt function:

See *Martin v. Ind. Mich. Power Co.*, 381 F.3d 574, 581-84 (6th Cir. 2004) (IT Support Specialist responsible for installing and upgrading hardware and software, configuring desktop computers, and testing and troubleshooting equipment is not exempt as administrative employee under pre-2004 regulations because such work is not directly related to management policies or general business operations and is not of substantial importance to management or operation of the business)....

The October 26 letter also refers to an August 19, 1999 Opinion Letter. That letter addresses employees with duties very similar to those of the plaintiffs:

This is in response to your letter requesting an opinion regarding the application of the FLSA to individuals employed as customer training consultants (CTCs). You ask whether the CTCs would qualify as either exempt administrative employees or exempt computer professional employees.

The CTCs are employed in your client's information management firm. The firm engages in, among other things, the installation of computer systems and customer training on the installed software. CTCs provide training to employees on customers' specialized computer software;

manipulate and modify software settings and specifications (e.g. toolbars and setup) to fit and respond to customer needs (does not include program writing or software developing); install, debug, troubleshoot, and convert data from old systems to the new conversions; test customers' moderns; and conduct customer follow-up visits to ensure customer satisfaction.

You state that CTCs are paid a salary of approximately \$ 26,000 to \$ 27,000. Some CTCs have bachelors' degrees in a business or technical discipline, and others have a strong industry, technical or business background.

Section 13(a)(1) of the FLSA provides a complete [*2] minimum wage and overtime exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Regulations, 29 CFR Part 541 (copy enclosed). An employee may qualify for exemption if all the pertinent tests relating to duties, responsibilities and salary, as discussed in the appropriate section of the regulations, are met.

An employee who is paid on a salary or fee basis of at least \$ 250 per week may qualify for exemption as a bona fide administrative employee if the employee's primary duty is office or nonmanual work directly related to management policies or general business operations of his/her employer or his/her employer's customers, and the employee's work requires the exercise of discretion and independent judgment.

Under section 541.205 of the regulations, activities that are "directly related to management policies or general business operations" of an employer are those relating to the administrative operations of a business. The exemption is limited to employees who perform work of substantial importance to the management or operation of the employer's business. The administrative operations of the business [*3] include white collar employees engaged in servicing a business. Examples of such activity include advising the management, planning, negotiating, representing the company, and business research. The phrase "directly related to management policies or to general business operations" include those whose work affects policy or whose responsibility it is to carry it out. This includes employees who are advisory specialists and consultants of various kinds.

Based on the information in your letter, it is our opinion that the CTCs would not qualify as bona fide administrative employees. These individuals perform technical tasks, which do not constitute making or implementing policy, or the performance of management functions, necessary for the application of the exemption.

This letter, while it concludes that employees quite similar to plaintiffs are not exempt, bases its conclusion more explicitly on the previous regulations requirement that the primary duty of administrative employees be directly related to management policies or general business operations rather than the requirement for the exercise of discretion and independent judgment. It is significant, of course, that it does not support the notion that the CTC's under discussion exercise discretion and independent judgment. Moreover, the October 26, 2006 letter cites this August 19, 1999 letter for a conclusion that IT Support Specialists don't exercise discretion and independent judgment:

Their duties do not involve, with respect to matters of significance, the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered as required by 29 C.F.R. § 541.202(a). *See Wage and Hour Opinion Letter August 19, 1999 (copy enclosed).*

Thus the August 19, 1999 letter does support my opinion that duties such as those of the plaintiffs do not involve the exercise of discretion and independent judgment.

CONCLUSIONS

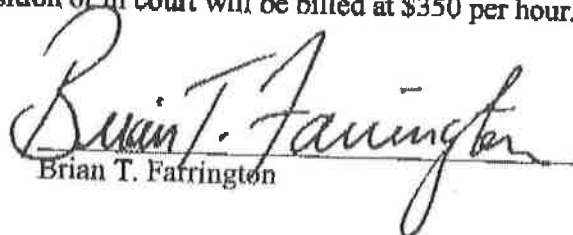
Based on my education, training and experience, it is my opinion that the duties of the IC's did not involve the exercise of discretion and independent judgment. Rather, they involved product knowledge, following prescribed policies, procedures, and guidelines, and the use of skill and experience. While there were some variations in the duties of the plaintiffs, none of these differences were significant enough to prevent me from reaching the conclusion that all the plaintiffs whose depositions I read did not exercise discretion and independent judgment. As a USDOL/WH investigator and supervisor, I routinely made decisions about whether the duties of a group of employees were sufficiently similar that I could reach a conclusion about the entire group, and in this case it is my conclusion that the duties of plaintiffs were sufficiently similar that I could conclude that they did not exercise discretion and independent judgment.

I am aware that there will be additional depositions and discovery in this case. I therefore reserve the right to supplement and/or amend my report accordingly.

COMPENSATION

I am billing \$300 per hour for all work on this case other than testimony, plus reasonable expenses. Testimony in deposition or in court will be billed at \$350 per hour.

13th
Dated: September 3, 2010


Brian T. Farrington

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 MARSHALL DIVISION

4 - - -

5 PATTY BEALL, MATTHEW MAXWELL,)
6 DAVID GRAVELY, TALINA MCELHANY,)
7 KELLY HAMPTON, CASEY BROWN,)
8 JASON BONNER, KEVIN TULLOS,)
9 ANTHONY DODD, ILENE MEYERS,)
10 TOM O'HAVER, JOY BIBLES, DON)
11 LOCCHI and MELISSA PASTOR,)
12 Individually and on behalf of)
13 all others similarly situated;)

14 Plaintiffs)

15 vs.)

2:08-cv-422-TJW

16 TYLER TECHNOLOGIES, INC., and)
17 EDP ENTERPRISES, INC.)

18 Defendants.)
19 -----)
20

21 DEPOSITION OF

22 CHRISTOPHER HEPBURN

23 PORTLAND, MAINE.

24 AUGUST 18, 2010

25 ATKINSON-BAKER, INC.
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

- - -

PATTY BEALL, MATTHEW MAXWELL,)
DAVID GRAVELY, TALINA MCELHANY,)
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LOCCHI and MELISSA PASTOR,)
Individually and on behalf of)
all others similarly situated;)
Plaintiff,)
vs.) 2:08-cv-422 TJW
TYLER TECHNOLOGIES, INC., and,)
EDP ENTERPRISES, INC.,)
Defendants.)

Deposition of CHRISTOPHER HEPBURN, taken on
behalf of Plaintiff, at Congress Street, Portland, Maine,
commencing at 8:32 a.m., Wednesday, August 18, 2010, before
Cheryl C. Pieske, RMR, Court Reporter and Notary
Public.

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TYLER TECHNOLOGIES, INC.
H. LYNN MOORE, ESQ.
In-house Counsel

1 you an implementation specialist? 08:49:15

2 A. You're testing my memory. That's a difficult 08:49:22

3 question to answer. When I started, the support 08:49:26

4 specialist and implementation specialist roles were 08:49:29

5 really combined. So I would say 2 years. 08:49:32

6 Q. Okay. Was that before Tyler Technologies 08:49:34

7 purchased the division you were working in or after? 08:49:38

8 A. Before. 08:49:41

9 Q. Before. Was that also MUNIS? 08:49:41

10 A. Yes. 08:49:44

11 Q. And when you became vice-president of services 08:49:48

12 in MUNIS, was that before or after Tyler Technologies 08:49:51

13 purchased your division? 08:49:54

14 A. Did you say vice-president of services? 08:50:01

15 Q. I think I did, and I may have written it down 08:50:04

16 incorrectly and I apologize. 08:50:07

17 A. That's okay. I believe that was after Tyler 08:50:08

18 had acquired us. 08:50:11

19 Q. Okay. Do you recall the date when Tyler 08:50:12

20 acquired MUNIS? 08:50:15

21 A. Not the specific date. On or around 1999, in 08:50:17

22 1999. 08:50:22

23 Q. Right. And that's fine. And when did you 08:50:22

24 become president of Schools? 08:50:26

25 A. January of this year. 08:50:28

1 Q. Okay. Now, I'm going to go back just a little 08:50:31
2 bit. You said -- to the documents that you reviewed, the 08:50:43
3 job descriptions, the evaluations, the time sheets, and 08:50:47
4 the notice. Why did you review those particular 08:50:49
5 documents? 08:50:54

6 A. They were presented by Paulo, and I was asked 08:50:54
7 to review them to prepare for today. 08:51:02

8 Q. Okay. Did you review any documents on your own 08:51:06
9 to help you prepare for this deposition today? 08:51:10

10 A. No. 08:51:13

11 Q. Okay. When you were an implementation 08:51:15
12 specialist and support specialist, how were those two 08:51:27
13 jobs combined? What were the duties of them? 08:51:29

14 A. In a small company, which we were, when I was 08:51:32
15 not answering phones as a support specialist, I would go 08:51:40
16 on site to clients to perform implementation services. 08:51:45

17 Q. Okay. And what were the implementation 08:51:52
18 services you performed? 08:51:54

19 A. It would be a very long list. I'll try to 08:51:55
20 summarize the highlights. 08:52:04

21 Q. Sure. 08:52:05

22 A. Analyze their -- their current business 08:52:06
23 practices, determine any changes to business practices, 08:52:11
24 configure software to adhere to those changing business 08:52:21
25 practices, review configuration with client, receive 08:52:26

1 client acceptance, review conversion files, load 08:52:35
2 conversion files, educate senior staff and user staff on 08:52:48
3 application, assist with go-live transition, assist with 08:53:05
4 post go-live support, and those are very high level. I'm 08:53:10
5 not encompassing all. 08:53:15
6 Q. Would you say those were the primary duties? 08:53:17
7 A. The primary ones I can recall. 08:53:19
8 Q. Okay. And what did you have to do when you 08:53:24
9 were analyzing current business practices of a customer? 08:53:35
10 A. A lot of question and answer, interviewing, 08:53:37
11 why -- learning why they do -- why they do what they do 08:53:46
12 in the order that they do things, what changes they would 08:53:51
13 like to make. In summary, a lot of interviewing. 08:53:55
14 Q. And what is the purpose of that interviewing? 08:53:58
15 I know it's to find out what they're doing, but I 08:54:01
16 understand the surface purpose. But what was the purpose 08:54:04
17 for you as an implementation specialist? 08:54:06
18 A. Primarily to see if there were any business 08:54:12
19 changes that the client would like to undertake. 08:54:14
20 Q. Okay. And what software module were you 08:54:16
21 implementing? 08:54:22
22 A. MUNIS. 08:54:23
23 Q. Okay. And was it -- what particular part of 08:54:23
24 MUNIS? Anything specific? 08:54:28
25 A. All. 08:54:30

1 Q. All of it? 08:54:31

2 A. (Nodding.) 08:54:31

3 Q. Okay. Did you have a list of questions that 08:54:32

4 you asked all the customers or a basic list that you went 08:54:37

5 from? 08:54:42

6 A. No. I would say it was very dynamic. 08:54:42

7 Q. Uh-hmm. How so? 08:54:46

8 A. There was no pre-determined list of questions 08:54:48

9 that I was given or we had at the time. 08:54:55

10 Q. What was your purpose in asking these 08:54:57

11 particular questions? And I know we've talked about to 08:55:04

12 see if there were any business changes they wanted to 08:55:07

13 make, but how was that important to you if there was a 08:55:09

14 business change that the customer wanted to make? 08:55:11

15 A. I'll provide an example. Would that be -- 08:55:13

16 Q. Sure. 08:55:17

17 A. -- that be okay? We'll take accounts payable. 08:55:18

18 They have a choice whether they would like to centralize 08:55:25

19 accounts payable functions or decentralize accounts 08:55:30

20 payable functions. That one decision impacts software 08:55:34

21 configuration and subsequent education. 08:55:37

22 Q. Okay. And would you tell the client which one 08:55:46

23 they should do? 08:55:52

24 A. No. My role was to explain the differences, 08:55:53

25 the pros of one, cons of one, pros of other, cons of 08:56:00

1 client acceptance, review conversion files, load 08:52:35
2 conversion files, educate senior staff and user staff on 08:52:48
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14 Q. And what is the purpose of that interviewing? 08:53:58
15 I know it's to find out what they're doing, but I 08:54:01
16 understand the surface purpose. But what was the purpose 08:54:04
17 for you as an implementation specialist? 08:54:06
18 A. Primarily to see if there were any business 08:54:12
19 changes that the client would like to undertake. 08:54:14
20 Q. Okay. And what software module were you 08:54:16
21 implementing? 08:54:22
22 A. MUNIS. 08:54:23
23 Q. Okay. And was it -- what particular part of 08:54:23
24 MUNIS? Anything specific? 08:54:28
25 A. All. 08:54:30

1 Q. All of it? 08:54:31

2 A. (Nodding.) 08:54:31

3 Q. Okay. Did you have a list of questions that 08:54:32

4 you asked all the customers or a basic list that you went 08:54:37

5 from? 08:54:42

6 A. No. I would say it was very dynamic. 08:54:42

7 Q. Uh-hmm. How so? 08:54:46

8 A. There was no pre-determined list of questions 08:54:48

9 that I was given or we had at the time. 08:54:55

10 Q. What was your purpose in asking these 08:54:57

11 particular questions? And I know we've talked about to 08:55:04

12 see if there were any business changes they wanted to 08:55:07

13 make, but how was that important to you if there was a 08:55:09

14 business change that the customer wanted to make? 08:55:11

15 A. I'll provide an example. Would that be -- 08:55:13

16 Q. Sure. 08:55:17

17 A. -- that be okay? We'll take accounts payable. 08:55:18

18 They have a choice whether they would like to centralize 08:55:25

19 accounts payable functions or decentralize accounts 08:55:30

20 payable functions. That one decision impacts software 08:55:34

21 configuration and subsequent education. 08:55:37

22 Q. Okay. And would you tell the client which one 08:55:46

23 they should do? 08:55:52

24 A. No. My role was to explain the differences, 08:55:53

25 the pros of one, cons of one, pros of other, cons of 08:56:00

1 other. Ultimately, it's their decision. My role would 08:56:04

2 be to offer -- 08:56:07

3 Q. Options. 08:56:10

4 A. -- options and the detailed analysis of those 08:56:11

5 options but not a recommendation. 08:56:15

6 Q. And when you say the detailed analysis, you're 08:56:17

7 referring to the particular effects each option would 08:56:19

8 have in terms of how they functioned; is that correct? 08:56:24

9 A. That -- correct. 08:56:27

10 Q. In other words, if it's centralized, you're 08:56:32

11 going to go through these particular steps to do things; 08:56:34

12 and if it's decentralized, you're going to go through 08:56:40

13 these particular steps to do things. Is that right? 08:56:42

14 A. Correct. Correct, steps and who authorizes 08:56:45

15 data, who enters data, at what points does data get 08:56:52

16 authorized, and again who has the authorization to bless 08:56:57

17 data. We're talking about checks going out to vendors. 08:57:04

18 Q. All right. When you're talking about 08:57:06

19 authorization, do you tell the client who should be 08:57:08

20 authorized to have access to certain information? 08:57:11

21 A. Again, no. It wouldn't be my place to tell 08:57:14

22 them who should have authorization; just simply an 08:57:19

23 authorization point needs to be made, who do they want to 08:57:22

24 denote as that individual. 08:57:26

25 Q. Okay. Is there anything else about analyzing 08:57:28

1	their current business practices that you used to do as	08:57:32
2	an implementation specialist and support specialist --	08:57:36
3	actually, we're just talking about the implementation	08:57:39
4	role --	08:57:41
5	A. Uh-hmm.	08:57:41
6	Q. -- that we haven't talked about.	08:57:42
7	MR. McKEEBY: Go ahead, if you understand.	08:57:44
8	A. The example I gave was one of --	08:57:50
9	BY MS. RAY:	08:58:00
10	Q. Many?	08:58:00
11	A. -- hundreds.	08:58:00
12	Q. Yeah.	08:58:01
13	A. But I think it provides a good illustration of	08:58:02
14	a specific question. There's no specific answer.	08:58:06
15	There's no clear-cut you will do this. It's presenting a	08:58:10
16	question, presenting the different options of the	08:58:17
17	question, gathering that information and then having the	08:58:19
18	connection of how that impacts the software	08:58:25
19	configuration.	08:58:27
20	Q. All right. And I think -- if I understand you	08:58:28
21	correctly, that with the exception of the many other	08:58:30
22	examples that you could provide as to how that worked,	08:58:34
23	we've discussed everything that you would have to have	08:58:36
24	done when you analyze the current business practices of a	08:58:40
25	customer?	08:58:44

1 something that I would consider be given to every client, 09:01:32
2 and then there's another path which is you could be 09:01:36
3 working with a client that is receiving custom software 09:01:38
4 modifications. 09:01:43

5 Q. And I'm going to get back to that in a minute. 09:01:43
6 Is there anything else that you can think of that you 09:01:48
7 would do when you were analyzing current business 09:01:51
8 practices? 09:01:54

9 A. Off the top of my head, I think that's the 09:02:00
10 major predominant items that I performed. 09:02:02

11 Q. Now, the next thing you said that you would do 09:02:06
12 is determine changes in their business practice. Is that 09:02:08
13 kind of really along the lines of what we've already 09:02:13
14 discussed, or is there something different to that? 09:02:16

15 A. I don't -- I don't believe I would determine 09:02:18
16 the changes. My role was to ask questions to see if the 09:02:26
17 client wanted to change their business practices. 09:02:31

18 Q. Okay. So, once again, that's really kind of 09:02:34
19 talking about what we have already talked about in the 09:02:38
20 analyzing the current business practices, correct? It's 09:02:41
21 not like something totally different? 09:02:44

22 A. It's a part of that process. 09:02:46

23 Q. Right. Okay. I just want to make sure I 09:02:48
24 understood. 09:02:50

25 A. Okay. 09:02:51

1 Q. There is nothing else that we haven't discussed 09:02:51
2 that goes into determining the changes in the business 09:02:53
3 practice within the confines of what we already 09:02:56
4 discussed? 09:03:04
5 A. My hesitation is there -- there could be other 09:03:04
6 items that I'm just not recalling right now. 09:03:16
7 Q. Okay. 09:03:18
8 A. I don't want to imply that it's a finite or 09:03:19
9 it's a black-and-white list or it's follow checklist 1 09:03:23
10 through 10. It's anything but follow checklist 1 through 09:03:27
11 10. 09:03:30
12 Q. If you recall something different, would you 09:03:30
13 please notify your attorney so that he could let us know? 09:03:32
14 A. Yes, I will. 09:03:36
15 MR. McKEEBY: Or if something triggers your 09:03:37
16 recollection during the day, we can take a break -- 09:03:39
17 MS. RAY: Absolutely. 09:03:41
18 MR. McKEEBY: -- and we can come back to that point. 09:03:42
19 BY MS. RAY: 09:03:43
20 Q. The next thing you talked about was configuring 09:03:43
21 software to adhere to the client's practices. Can you 09:03:46
22 tell me what you did to configure the software to adhere 09:03:52
23 to the client's practices? 09:03:55
24 A. I will use the -- I will continue with the 09:03:56
25 example of accounts payable. If a client during the 09:04:00

1 question-and-answer session stated that they historically 09:04:06
2 have always run accounts payable invoice out of a central 09:04:11
3 accounts payable office at town or city hall and they 09:04:17
4 find that to be inefficient and they'd like to 09:04:20
5 decentralize that process, then that answer would lead me 09:04:23
6 down a path of having to ask who at each department would 09:04:30
7 be entering those invoices, set those users up in the 09:04:37
8 system, set the department codes up in the system so that 09:04:40
9 user A is in department 1, user B is in department 2; and 09:04:45
10 then the data that's entered at the user's would have to 09:04:51
11 funnel to an appropriate person within the central. It 09:04:56
12 could be more than one person. So then I would have to 09:04:59
13 configure work flow to say that if departments 1, 2, 3 09:05:02
14 would go to one person in central accounts payable, and 09:05:07
15 departments 4, 5, 6 would go to another. I would have to 09:05:12
16 train them and make sure they understood that when it was 09:05:15
17 their turn to review and approve those invoices, what 09:05:19
18 they did, and that training would be completely different 09:05:23
19 if the next client said, well, we would just as soon keep 09:05:29
20 it as a central accounts payable function. Then there 09:05:33
21 wouldn't be a departmental need. There wouldn't be the 09:05:38
22 work flow need. But then I would need to educate the 09:05:41
23 departmental folks on how to enter an invoice and how to 09:05:44
24 approve it, et cetera. So two different -- two different 09:05:47
25 implementations. 09:05:52

1 Q. What steps would you specifically have to do to 09:05:52
2 set up users? 09:05:56

3 A. There is a user ID table that says this user is 09:05:56
4 authorized to use the software, and then within that, 09:06:07
5 what are they authorized to use within the software. So 09:06:11
6 an example, an accounts payable entry person should not 09:06:15
7 see the employee file to see what everyone's wages are, 09:06:19
8 and I would have to make sure that they didn't. 09:06:23

9 Q. So is it basically going into the software and 09:06:28
10 setting up or doing like data entry in the sense of, 09:06:32
11 okay, I'm going to allow access here, I'm not going to 09:06:37
12 here, I am going to enter this code into this area so 09:06:41
13 that it will automatically allow this person access? Is 09:06:44
14 that what we're talking about? 09:06:47

15 A. It's more complex than that given -- you really 09:06:48
16 are interviewing the department and the overall financial 09:06:55
17 manager to see who can do what. 09:07:01

18 Q. Well, I understand that. I'm just talking 09:07:05
19 about the actual getting it done. 09:07:06

20 A. Oh, after the interviews, it's filling out data 09:07:08
21 tables. 09:07:13

22 Q. Okay. And those options are contained in the 09:07:14
23 software. You just have to fill in what those options 09:07:17
24 are based upon what you have learned from what the person 09:07:21
25 wants to do, the client wants to do. Is that correct? 09:07:25

1	A. Correct.	09:07:27
2	Q. Okay. Anything else about what you had --	09:07:27
3	well, no, I'm sorry. You also said you set up codes. I	09:07:30
4	assume that's kind the same thing we're talking about is	09:07:33
5	entering the option into the software, right? Is that	09:07:36
6	correct?	09:07:40
7	A. In the example I gave, if you are going to --	09:07:40
8	if a client were going to departmentalize or distribute	09:07:43
9	accounts payable functions, then there is a table that	09:07:47
10	needs to be filled out, a departmental table. It defines	09:07:49
11	the department, the cost center codes that they're going	09:07:54
12	to be allocated to, and default numbering, schematics for	09:07:58
13	that department, do they have their own numbering range.	09:08:03
14	So that table would, then, need to be populated and, in a	09:08:05
15	simplistic view, turned on and integrated with other	09:08:11
16	tables.	09:08:16
17	Q. Okay. And when you're setting up data for the	09:08:17
18	customer's work flow, once again, we're talking about	09:08:21
19	populating those areas so that their work flow will	09:08:24
20	perform within the software appropriately. Is that	09:08:29
21	correct?	09:08:32
22	A. Work flow is a great example of -- I think it	09:08:32
23	dovetails nicely with the questions and answers because	09:08:39
24	work flow is not just the flow of data from point A to	09:08:43
25	point B to point C. It's also notifications. So if I	09:08:47

1 you did, all of your job duties as an implementor? 09:13:39

2 MR. MOORE: We're talking about him personally, 09:13:45

3 right? 09:13:47

4 MS. RAY: Uh-hmm. 09:13:48

5 MR. MOORE: Okay. 09:13:49

6 A. Again, if I was engaged in a tax or utility 09:13:49

7 implementation, it would be 100 percent of the time. If 09:13:55

8 I was engaged in -- 09:13:58

9 Q. Well, no. Let me make sure I understand. I 09:13:59

10 don't mean to cut you off rudely, and I apologize. I'm 09:14:02

11 talking about I know that if you're doing tax, you're 09:14:05

12 saying that you would do that possibly 100 percent of the 09:14:07

13 time. But you also had to analyze their current business 09:14:09

14 practices, you had to do all -- you know, so what 09:14:12

15 percentage of the time -- 09:14:15

16 A. Oh. 09:14:15

17 Q. -- in relation to everything that you did would 09:14:17

18 you be actually doing that function? 09:14:18

19 A. 10 percent but I'm making my best guess. 09:14:20

20 Q. Okay. Is there anything else about the 09:14:30

21 configuration process that you did that we haven't 09:14:32

22 discussed? Once again, I'm not talking about different 09:14:36

23 examples of when I did tax or when I did accounts 09:14:40

24 receivable. I'm just talking about the actual process. 09:14:42

25 A. I think that the examples we've discussed of 09:14:45

1 primary -- 09:14:52

2 Q. Okay. 09:14:53

3 A. -- provide a good example. 09:14:54

4 Q. The next thing you said you would do is review 09:14:55

5 the configuration with the client. 09:14:57

6 A. (Nodding.) 09:15:00

7 Q. Can you tell me what that entailed if it's 09:15:02

8 something we haven't already discussed? 09:15:07

9 A. Well, after the interviews, I would build the 09:15:08

10 tables, as you've mentioned, and then I would show the 09:15:13

11 client in an example. Take a department, if they had a 09:15:18

12 dozen departments, I would take one; and we would run 09:15:22

13 through a day in the life or a week in the life of what 09:15:27

14 they would see; and the purpose of that was to show them, 09:15:30

15 based upon their decisions and my marrying those 09:15:38

16 decisions with the application, did the intended result 09:15:43

17 or was the intended result achieved. 09:15:49

18 Q. Kind of like showing them how it's going to 09:15:51

19 run. A dry run, so to speak? 09:15:54

20 A. A dry run would be a good -- a good way to 09:15:55

21 summarize that. 09:15:58

22 Q. Okay. Anything else that you had to do with 09:15:58

23 regard to that review process? 09:16:02

24 A. If it went successfully, we were done. If it 09:16:04

25 didn't, we would start all over again. 09:16:11

1 Q. Made changes? 09:16:13

2 A. Back to questions and answers, back to options. 09:16:14

3 Q. Tweak it, so to speak? 09:16:16

4 A. Iterative process. It loops never ending 09:16:18

5 sometimes. 09:16:23

6 Q. So you would -- you know, if they decided, no, 09:16:23

7 I really don't like the way that works; you know, I 09:16:26

8 thought I wanted that; I look at it now, I don't really 09:16:29

9 want that, you would go back and reconfigure it, so to 09:16:31

10 speak, based upon what now they feel they want. Is that 09:16:34

11 correct? 09:16:37

12 A. I'd first start with a lot of questions. 09:16:37

13 Q. Sure. 09:16:41

14 A. Go right back to the beginning. Let's start 09:16:42

15 over, pros and cons. I wouldn't do anything without the 09:16:44

16 client making another decision and then repeating that 09:16:52

17 process. 09:16:56

18 Q. Okay. Anything else with the review process, 09:16:56

19 or have we covered that? 09:17:00

20 A. That's in general what happens. 09:17:01

21 Q. Okay. You then said that you received client 09:17:03

22 acceptance. I'm presuming that means that you got their 09:17:07

23 final okay? 09:17:11

24 A. At some point we get the green light to move 09:17:14

25 forward. 09:17:16

1 isolation, you've -- you're looking for trouble. So the 11:40:09
2 convert question comes up in the general analysis of how 11:40:15
3 we're going to define the to-be model, and it's part of 11:40:19
4 that iterative process. Do I convert payroll? Well, how 11:40:24
5 about we say yes on the -- no on the employee data but 11:40:29
6 yes on the W-2 history data. So -- and now I have got to 11:40:33
7 carry those two discussions all the way through. So when 11:40:37
8 I'm talking about reporting and quarterly 941 reports, 11:40:41
9 there is an impact all the way downstream on whether or 11:40:44
10 not I converted that W-2 information. So it's -- to talk 11:40:47
11 about conversions in isolation is -- I'm not programmed 11:40:51
12 to talk about that. 11:40:57

13 Q. The implementation specialist doesn't make 11:40:58
14 those decisions, you know, on their own, I mean, assuming 11:41:02
15 they make them at all. We've talked about that many do 11:41:08
16 not. But assuming that any do, it certainly would not be 11:41:11
17 done in isolation in the sense of I'm going to come in, 11:41:15
18 I'm going to analyze what you're doing, I am going to 11:41:18
19 decide what you need to do and how I need to get it done 11:41:21
20 through this new software? 11:41:24

21 A. Well, that's incorrect from the standpoint that 11:41:27
22 at MUNIS they're not alone because you have your project 11:41:31
23 manager to fall back on, but in Eden and INCODE, you're 11:41:35
24 it. I mean, you're the implementation consultant. Your 11:41:38
25 project manager is not going to assist you in the 11:41:41

1 convert-not convert discussion. So you're it. You're it 11:41:43
2 for Eden, INCODE, anyone else who uses the bull-pen 11:41:47
3 approach. You've got to decide with that client. You're 11:41:51
4 not in isolation because the client is making that 11:41:53
5 decision. 11:41:56
6 Q. That's what I'm talking about. The client is 11:41:56
7 making the decision ultimately? 11:41:57
8 MR. McKEEBY: On convert or not convert? 11:42:00
9 MS. RAY: On -- on what information to convert or 11:42:03
10 not convert. 11:42:04
11 A. Well, I think -- I'm sorry. I didn't let you 11:42:07
12 finish. 11:42:09
13 BY MS. RAY: 11:42:09
14 Q. I mean, are they not? 11:42:09
15 A. The client would just as soon convert 11:42:10
16 everything because it means less work for them. It's the 11:42:17
17 implementation consultant's job to give them the pros and 11:42:20
18 cons of their decisions that they choose to make, meaning 11:42:23
19 I could -- an implementation consultant could tell their 11:42:28
20 client if we convert, you will have more work to do than 11:42:31
21 if we don't convert; and then can that implementation 11:42:34
22 consultant articulate with certainty and conviction why 11:42:39
23 converting data means more work for the client when it 11:42:49
24 would clearly simplistically seem to anyone that 11:42:52
25 converting data would mean less work for a client. And 11:42:56

1 it's their -- and, ultimately, the client can still 11:43:00
2 choose, hey, I want to go down that path, and then the 11:43:05
3 implementation consultant lives with that decision and 11:43:08
4 executes. 11:43:10
5 Q. Okay. 11:43:10
6 MS. RAY: Do you guys want to break now? 11:43:12
7 MR. McKEEBY: Sure. 11:43:14
8 THE VIDEOGRAPHER: The time is 11:43 a.m. We're off 11:43:15
9 the record. 11:43:18
10 (Whereupon a recess was taken.) 11:43:18
11 THE VIDEOGRAPHER: The time is 11:54. We're back on 11:54:32
12 the record. 11:54:34
13 BY MS. RAY: 11:54:36
14 Q. We're back after a short break. Are you ready 11:54:36
15 to proceed? 11:54:38
16 A. Yes. 11:54:39
17 Q. Okay. We were talking about discretion and 11:54:39
18 judgment. Now, what discretion and judgment is it your 11:54:42
19 testimony is performed when an implementation specialist 11:54:45
20 is training or providing education? 11:54:49
21 A. Is the question -- the "what" in there, is it 11:54:52
22 is there discretion and -- 11:54:58
23 Q. If so, what is it? 11:55:00
24 A. -- judgment during training? Is that the 11:55:01
25 question? 11:55:04

1 Q. Well, let me do it this way. What discretion 11:55:04
2 and judgment do you claim is exercised by implementation 11:55:10
3 specialists when they're performing their job function of 11:55:14
4 training? 11:55:17
5 A. Can you please explain training just so I know 11:55:17
6 what's in your mind? 11:55:24
7 Q. The educational aspect that you were talking 11:55:24
8 about, educating the users on the software. 11:55:27
9 A. Okay. The example -- yes, there is independent 11:55:31
10 judgment when doing training. I would -- there are many 11:55:41
11 cases -- you asked what. The list would be long 11:55:49
12 depending on what I'm doing. But as an example, if I'm 11:55:53
13 leading a class of 30 people, I'm a teacher at that 11:55:57
14 point. I have to understand who is in my class. I could 11:56:04
15 have a recent college graduate and someone who is going 11:56:07
16 to retire in 1 to 2 years. Are they excited about being 11:56:10
17 in the class? I've got to determine that. Their 11:56:15
18 knowledge, their skill level, am I going too fast, am I 11:56:17
19 going too slow, do I -- I have got to point out the 11:56:20
20 people in the class that are struggling. I'm going to 11:56:24
21 have to work with them potentially one on one. I'm going 11:56:27
22 to have to make an independent judgment to the client if 11:56:30
23 I'm Eden or INCODE, to my project manager if I'm MUNIS, 11:56:34
24 on did my audience learn what was being taught that day, 11:56:39
25 should I go faster or longer in certain subjects. 11:56:49

Freedom Court Reporting, Inc

1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 MARSHALL DIVISION

4 _____

5 _____

6 PATTY BEALL, MATTHEW

7 MAXWELL, TALINA McELHANY and

8 KELLY HAMPTON, Individually

9 and on behalf of all other

10 similarly situated,

11 Plaintiffs, 2:08-cv-422 TJW

12 v.

13 TYLER TECHNOLOGIES, INC., and

14 EDP ENTERPRISES, INC.,

15 Defendants.

16 _____

17 _____

18 DEPOSITION OF

19 ILENE MEYERS

20

21 At Raleigh, North Carolina

22 Friday, July 30, 2010; 9:14 a.m.

23 Reported by: Lindsey D. Cline, CVR

Freedom Court Reporting, Inc

2

1

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2

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8 E X H I B I T S

9 EXHIBITS DESCRIPTION MARKED/REFERENCED

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11 Number 2 Customer Services Report 22/23, 24, 26

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1 Q. Okay. Like a project report or anything specific
2 to the project? Anything you can recall along
3 those lines?

4 A. You know, I don't want to be very specific because
5 I'm not recalling.

6 Q. Okay.

7 A. But I just know that the project manager always
8 did the analysis of what the client needs and
9 wants. And so I know that had to have been
10 communicated to me. And I'm not positive that
11 there was an actual form or if it actually was
12 just through e-mail saying this is exactly what
13 the client is going to be using.

14 Q. Okay. And when you say the analysis of what the
15 client needs and wants, you're talking something
16 more than just what module you're training on,
17 correct?

18 A. Yes.

19 Q. This is something more specific as to what the
20 client wants to do within the particular module as
21 to routing of data, for example?

22 A. What they're using and what they're not.

23 Q. Within the module?

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1 A. Yes.

2 Q. Did you as an implementation consultant -- I'm
3 sorry -- implementation specialist at Tyler ever
4 undertake an analysis of what the client needs and
5 wants -- similar to what you described the project
6 manager typically does?

7 A. No. That was the project manager's duties.

8 Q. Okay. And so your recollection, as best you can
9 recall, is that that would have been communicated
10 to you by the project manager in some form,
11 perhaps in a document, but perhaps through an e-
12 mail or a phone conversation?

13 A. Yes.

14 Q. Is there a name for that analysis of what the
15 client needs and wants that was used at Tyler?

16 A. I don't know if there was a set name, but I would
17 call it the project plan.

18 Q. If I use the term systems analysis, is that
19 something you're familiar with as a term used at
20 Tyler?

21 A. I think that's a common usage for most technology,
22 system analysis. But I don't know if that's
23 particularly what they called it as a project

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1 manager doing it.

2 Q. Okay. But just using that sort of generic
3 understanding of what a systems analysis means, is
4 that a description of what we've discussed in
5 terms of analyzing what the client wants and needs
6 with respect to the software and what it intends
7 to use and what it doesn't intend to use?

8 A. I don't know, because I don't know what the real
9 definition of that term is. And I hate to --

10 Q. Okay.

11 A. -- say anything.

12 Q. But you're more comfortable with the phrase
13 project plan to describe that?

14 A. Uh-huh, yes.

15 Q. Okay. Would it have been typical for you to be on
16 the phone with the customer prior to visiting the
17 customer site?

18 A. It could be, possibly.

19 Q. And what types of -- what reason would you have to
20 communicate with the client before the trip?

21 A. I would just tell them I was to be expected in at
22 this time. "I'm staying here. Is there anything
23 I need to bring, or is there anything you need

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1 more of a calendar that -- or schedule that your
2 project manager or someone else prepared that
3 would allow you to know, "Okay. Three weeks from
4 now I'm supposed to be in the Virgin Islands," for
5 example. Or was that something that was just
6 communicated to you more on an ad hoc --

7 A. Yeah, I believe --

8 Q. -- informal basis?

9 A. I believe it was done that way because we were all
10 in different places. I lived in Raleigh. And if
11 we look at my last project manager, she was in
12 Louisiana. So we really never --

13 Q. Okay. So that's Ms. Lowe?

14 A. Yes.

15 Q. Ms. Shumaker-Jackson was in Raleigh, as well?

16 A. Yes, she was.

17 Q. And you worked out of the Raleigh office during
18 your entire tenure with Tyler?

19 A. Yes.

20 Q. What -- okay. So let's say Ms. Lowe has given you
21 a phone call or an e-mail, informed you who the
22 client was, what module you would be training on,
23 when you were to report to the client, who your

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1 contact person was. Would you get anything in
2 writing to review to help prepare you for the
3 implementation, other than perhaps the e-mail that
4 you've summarized that you would receive from your
5 project manager?

6 A. The only thing I would receive is what module I
7 was teaching. And then I would have the material
8 that was developed by MUNIS or Tyler -- whoever --
9 the training material. I would have that training
10 material to use.

11 Q. And what -- when you say training material, to
12 what do you refer?

13 A. It's just a manual for each of the modules.

14 Q. Was this something that you would have in your
15 physical possession in terms of a hard-copy book,
16 or would this be something on the system?

17 A. It could be on the system, but I always had a
18 printout. I always had a hard copy.

19 Q. And did these manuals have a name?

20 A. It was whatever the modules were. If it was
21 accounts payable, it would say Accounts Payable,
22 MUNIS Accounts Payable.

23 Q. And were these in separate documents or were they

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1 all part of the same larger document?

2 A. It was separate documents for each module.

3 Q. Were they -- how would you -- would you describe
4 these documents as -- I think you used the term
5 manuals. Are they -- how long would they
6 typically be?

7 A. It fluctuated.

8 Q. Depending on the application?

9 A. Yeah, depending on the application.

10 Q. Would these be the same manuals that you mentioned
11 that you reviewed in connection with your
12 training?

13 A. Yes.

14 Q. So did the manuals explain how the software worked
15 or did they explain how you were supposed to train
16 others to learn the software?

17 A. It just gave you screen shots and how the software
18 worked.

19 Q. Okay. Other than these manuals and the e-mail,
20 would there be anything else you would review
21 document-wise before embarking on the trip to the
22 customer site?

23 A. I'm not recalling.

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1 Q. And what kinds of things would you tell your
2 project manager during these calls, just how the
3 training was going, that kind of thing?

4 A. I would give her a -- if the training was going
5 well, was it running on time, was anything that
6 came up possibly that might need to be handled, if
7 the system was working well, if there's something
8 that maybe the system wasn't doing, if, you know,
9 she could look into it.

10 Q. When you say "if the training was going on time,"
11 on time relative to what, a schedule, I take it?

12 A. Just that I knew I was there for three days, three
13 billable days. Was the three billable days going
14 to cover what I needed to cover?

15 Q. And what would that depend on?

16 A. It would depend on how quickly your client was
17 picking up what you were training or how well you
18 trained.

19 Q. And when you said one of the things you would
20 report was whether or not the training was going
21 well, is that the same kind of thing in terms of
22 how -- when you say "going well," did you mean how
23 quickly the client was picking up the material?

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1 A. It's just that there was no glitches in the
2 system. The client seems to understand what's
3 going on and the data information came -- through
4 conversation, they convert their information into
5 the system. Everything seems to be working well.

6 Q. And converting the data into the system, that was
7 something done by Tyler's conversion department?

8 A. Yes, if that's the name of that. But I don't know
9 if it's called Tyler's conversion department. But
10 there were technology folks that did that.

11 Q. How about this? It wasn't -- you were not the one
12 that converted the data?

13 A. I did not. And they're lucky I didn't.

14 Q. Fair enough. What if there was a situation where
15 the customer's employees who you were training
16 were not picking up on the training such that the
17 training was not on time? Would you discuss with
18 the project manager the need to have additional
19 training?

20 A. Yes, I would definitely pass that type of
21 information along.

22 Q. And then I guess it was up to the project manager
23 to work that out with the client?

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1 A. And it also always depended on the contract.
2 Whatever contract the customer had with Tyler,
3 they were allowed so many hours of implementation
4 -- or billable days of implementation. So if it
5 fell within that parameter -- otherwise there
6 would be an additional charge to the customer. So
7 that all had to be worked around. I didn't do any
8 of that. I just passed information along.

9 Q. So were you aware of what the number of hours were
10 on the contract?

11 A. I didn't -- I never saw contracts.

12 Q. Okay. When you did complete a trip report, what
13 would you do with it?

14 A. It actually went in -- I would send it to -- if I
15 recall correctly, I would do my trip report and
16 send it to my project manager via e-mail. It was
17 a report within the system.

18 Q. Did you have responsibilities when the customer
19 went live with Tyler's software?

20 A. If I had implemented the full time for one client,
21 I would be there for the go-live.

22 Q. Well, let's make sure we're on the same page about
23 what go-live means. Tell me what your -- how

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1 you're using that.

2 A. Go-live is the -- now have actually -- are in
3 production, meaning it is an active system within
4 their business and their folks will be actually
5 using the system. So it is actually generating
6 information. It's actually having people put
7 input into their system. So everything is
8 supposedly worked out prior to that for them to go
9 live. And we would be there for support.

10 Q. When you say we, would there be others with you?

11 A. Generally, the project manager is there for go-
12 live.

13 Q. But the project manager wouldn't be there when you
14 were doing the other training that you discussed?

15 A. Generally not. There had been times that she
16 would be there.

17 Q. But the --

18 A. But on a general basis, no, she was not there.

19 Q. You would do that by yourself?

20 A. Yes.

21 Q. So in terms of the support that you provided
22 during the go-live process, was more -- I mean,
23 that's not something that the manual necessarily

1
Talina Reann McElhany
3/29/10

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PATTY BEALL, MATTHEW
MAXWELL, TALINA MCELHANY,
AND KELLY HAMPTON,
individually and on behalf
of all other similarly
situated,
 Plaintiffs,

No. 2:08-cv-422VS

TYLER TECHNOLOGIES, INC.
AND EDP ENTERPRISES, INC.,
 Defendants.

ORAL DEPOSITION OF

TALINA REANN MCELHANY

3/29/10

ORAL DEPOSITION OF TALINA REANN MCELHANY,

produced as a witness at the instance of the DEFENDANTS,
and duly sworn, was taken in the above-styled and
numbered cause on the 29th day of March, 2010, from
9:14 a.m. to 12:35 p.m., before TINA TERRELL BURNEY, CSR
in and for the State of Texas, reported by machine
shorthand, at the offices of SLOAN, BAGLEY, HATCHER &
PERRY, 101 East Whaley Street, Longview, Texas 75601,
pursuant to the Federal Rules of Civil Procedure.

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1 Q. And how did you come to have an understanding
2 of the EDPro software and how it worked? Is that just
3 something you picked up on the job?

4 A. Yes.

10:32AM 5 Q. And your supervisor throughout the time that
6 you were a client liaison was Chandra Robins?

7 A. Yes.

8 Q. Was there any assistant supervisors or anything
9 like that?

10:32AM 10 A. No.

11 Q. So the e-mails and conversations that you would
12 have as a client liaison with the point of contact at the
13 school district would be for the purposes of
14 understanding the customer's existing software?

10:33AM 15 A. Data.

16 Q. Data. And I take it this isn't necessarily
17 like a three-hour conversation that you block out. It's
18 more something that occurs over time. Is that more
19 accurate?

10:33AM 20 A. There was an initial call where we would
21 gather specific information, and then there were many
22 more calls after that once we had gotten a look at the
23 data, the first run-through of data.

24 Q. Right now I'm talking about gathering the
10:34AM 25 information from the client. Maybe we can start with

1 this initial call. First of all, at this point in the
2 process overall, the customer has already purchased EDPro
3 from EDP?

4 A. Well, I don't know at what point the purchase
10:34AM 5 occurred, but they had agreed that, yes, they were going
6 to convert, and this was going to be their software.

7 Q. Okay. Would you agree with me that a client
8 liaison was the primary point of contact between the
9 customer and EDP during the conversion process?

10:35AM 10 A. Yes.

11 Q. All right. So during this initial call, you
12 would gather information about the existing customer's
13 data?

14 A. Yes.

10:35AM 15 Q. And how would you know what questions to ask?

16 A. We had a list, a checklist more or less, of
17 questions that we had to ask and answer and check off as
18 they answered them.

19 Q. What was this list called?

10:36AM 20 A. I don't remember. I'm sorry. Client liaison
21 first call checklist, something like that, but I don't
22 recall the exact name.

23 Q. And how long was the list?

24 A. Two pages.

10:36AM 25 Q. So the questions that you're asking the

1 client -- or rather the point of contact at the customer,
2 at least during this initial call, were on this list?

3 A. Yes.

4 Q. Did you ever have to deviate from what was on
10:36AM 5 the list?

6 A. Sometimes you had to clarify the question for
7 the customer, but we tried not to deviate from the list.

8 Q. What were -- can you give me an example of a
9 question that was on the list?

10:37AM 10 A. Yes. Do you have a July 1 fiscal year or a
11 September 1 fiscal year.

12 Q. Just for my benefit, do schools have either one
13 or the other typically?

14 A. Yes.

10:37AM 15 Q. And so were all of the questions -- I
16 understand that's not really a yes or no question -- but
17 were the questions -- did they require you to provide
18 information other than just Option A or Option B? Like,
19 for example, were there questions along the lines of,
10:37AM 20 describe how grades are computed in terms of numbers or
21 letters or anything like that?

22 A. No.

23 Q. It was more along the lines of two different
24 options?

10:38AM 25 A. Two or three. If I could just clarify, this

1 A. Yes.

2 Q. I think I have this, but your job didn't change
3 after Tyler took over, did it?

4 MS. BAGLEY: Object to form.

10:46AM 5 A. No, it did not.

6 Q. It did not change?

7 A. My duties didn't change. My title changed.

8 Q. Right. Your title changed from client liaison
9 to implementer?

10:46AM 10 A. I believe it was implementation specialist.

11 Q. But in terms of what you were doing on a
12 day-to-day basis, it stayed the same?

13 A. Yes.

14 Q. So the description of your job that I
10:46AM 15 referenced in Paragraph 4 of your declaration is accurate
16 as to while you were a client liaison at EDP and at
17 Tyler?

18 A. Yes.

19 Q. So how often were these departmental meetings?

10:46AM 20 A. I don't really know.

21 Q. Were they more than once a month?

22 A. No.

23 Q. Okay. So you have this initial call. What do
24 you do with the form that you completed? Did you give
10:47AM 25 that to the programmer?

1 A. Yes, and keep a copy for yourself also.

2 Q. So what do you do next in the conversion
3 process? Do you wait for the programmer to give you
4 information, or how do you know if you're supposed to do
10:48AM 5 something else in connection with the conversion process?

6 A. Once you have given that to the programmer,
7 he'll run the initial conversion through the conversion
8 process. And then he would either come and tell us it
9 completely bombed, and this is what I think is wrong, so
10:48AM 10 gather X, Y, Z information from the customer, or if they
11 had good, clean data, he might could tell you specific
12 areas that needed attention.

13 So you would go back to your customer and
14 say, I need you to do this, this and this.

10:48AM 15 Q. And how did he communicate the status of the
16 initial conversion to you, by e-mail, orally?

17 A. Both. We would have conversations about it,
18 and he might send me an e-mail and say, these are the
19 things that I see wrong. If I needed clarification, I
10:49AM 20 would just go to him, and we would talk about it. I
21 would take notes.

22 Q. How long would it typically take him to do the
23 initial conversion?

24 A. I wouldn't say there was a typical time.

10:49AM 25 Q. What would it depend on?

1 A. Sometimes a whole day. It could depend on the
2 data itself, the parameters that he had to set in the
3 conversion database in order to run it. That part was
4 kind of above me, above my skill set.

10:49AM 5 Q. What would be like an example of an area that
6 needed his attention?

7 A. Sometimes if a customer didn't have their
8 parameters in the old software set exactly right, then
9 when the data was pulled and the conversion program
10:50AM 10 started trying to read through the data that had been
11 pulled, it might hit something, a blank -- an area that
12 had never been filled out within the parameters, and it
13 might just bomb completely.

14 Q. So he would tell you that you needed to get a
10:50AM 15 particular type of information from the customer?

16 A. He would say, you know they left the -- they
17 typed too many digits in their checking account number,
18 let's say, or for some reason or other there was trash
19 after the initial nine numbers in a checking account
10:50AM 20 number, and while the Unix system might not read past
21 nine digits, the EDPro system would or the conversion
22 program would, so that would be trash, so that would
23 need to be cleaned up in the old data.

24 Q. But in that example of the checking number or
10:51AM 25 check number --

1 Q. Were there other questions you weren't able to
2 answer that you would have to go to the conversion
3 programmer or someone else to get assistance?

4 A. Not the conversion programmer at that point.
11:07AM 5 I mean, if they were already running, there wouldn't be
6 a conversion question.

7 Q. It would just be more of a data question?

8 A. Not a data question. There could be an error
9 that I had never seen before that they were running into
11:07AM 10 that I would have to go ask, depending on which module
11 of the program it was, whether it was GL or banking or
12 HR, that would depend on which programmer I went to and
13 said, hey, I've never seen this, so what do you think.

14 And at that point the programmer might
11:08AM 15 have to take it and might have to dig through the code
16 and see what could be causing that error.

17 Q. But this wouldn't be the conversion programmer,
18 it would be a separate employee that's a programmer?

19 A. Well, the programmer and the conversion
11:08AM 20 programmer are one and the same, so some of the time it
21 was him, but it wouldn't necessarily have anything to do
22 with the conversion. It was just a general software
23 error.

24 Q. Was there a programmer with whom you worked?

11:08AM 25 A. Yes, there were.

1 Q. Who were they?

2 A. Actually three, but primarily Jesse Stanley.

3 Q. And who else?

4 A. Richard Fritz, those were the main two.

11:08AM 5 Q. This next sentence says: "Additionally, my job
6 duties consisted of gathering information from customers
7 and communicating information about the customer's data
8 to the software conversion programmers." Have
9 we talked about that or does that refer to something
11:09AM 10 different?

11 A. No, we've talked about that.

12 Q. Okay. The next sentence says: "I performed
13 this work from the EDP Enterprises, Inc.'s office using
14 the telephone and my computer, which I could network into
11:09AM 15 the customer's computer."

16 That last phrase, does that mean you could
17 access the customer's computer remotely?

18 A. Yes.

19 Q. Is that what that means when you say "network
11:09AM 20 into the customer's computer"?

21 A. Yes.

22 Q. And when would you have to do that?

23 A. Often when we were gathering information and
24 sometimes after-hours when the customer was not
11:09AM 25 available, and we'd have a question about how something

1 was entered, we could just look at the data ourselves
2 and see some things, not all things.

3 Q. What things could you look at, and what things
4 were you unable to look at?

11:10AM 5 A. Well, some things you could see, but you still
6 needed clarification from the customer.

7 Q. You needed to ask the customer additional
8 questions?

9 A. Yes.

11:10AM 10 Q. And these are questions about their data?

11 A. Yes.

12 Q. Because you had to understand the data to
13 communicate it to the conversion programmer?

14 A. That's right.

11:10AM 15 Q. Were there ever times where you were operating
16 the customer's system remotely while you were on the
17 telephone?

18 A. Sometimes.

19 Q. What would those instances involve?

11:10AM 20 A. The gathering of information or clarifying of
21 information. Sometimes you could tell a customer,
22 okay -- and I'm just going to use my checking account
23 number as an example.

24 Q. Okay.

11:10AM 25 A. You could say that the checking account

1 number, that field appears to have trash in it from what
2 we're seeing when we work through the conversion. When
3 the programmer runs through the conversion, he says
4 there's trash in that field, and the customer could say,
11:11AM 5 okay, I'm looking at it, and I don't see any trash. I
6 would say, okay, let me log in and see what I see.

7 well, I've logged in, and sure enough
8 there would be trash. Well, I would say to the
9 customer, are you on screen such and such, and she would
11:11AM 10 say, oh, no. I mean, that could happen frequently. You
11 could direct a customer to a particular screen in the
12 program, and they would misnavigate and not be looking
13 at what you were telling them to look at.

14 Q. So you had to get them on the right page?

11:11AM 15 A. Right.

16 Q. Okay. The next sentence says: "During the
17 conversion process, I would verify the customer's data
18 after it was converted."

19 what did you do to verify the customer's
11:11AM 20 data after it was converted?

21 A. I would compare -- once the conversion
22 programmer had gotten a clean enough run through the
23 conversion that he could actually populate the EDPro
24 database, then we would compare certain areas in the
11:12AM 25 Unix data to areas in the EDPro data. I believe I

1 mentioned earlier about once you got to the point where
2 you had data in the database, you could actually run
3 error reports in EDPro, and it would tell you there was
4 missing data here and stuff like that, and then you
11:12AM 5 could go back and look at the Unix data and see why it
6 was missing.

7 Q. So were those error reports -- you would run
8 error reports?

9 A. It was part of the EDPro program.

11:12AM 10 Q. Would it happen automatically, or would you
11 have to generate the report?

12 A. You'd just click a button.

13 Q. But you would have to do something to the
14 system to generate the error report?

11:13AM 15 A. Yes.

16 Q. And that would be part of your job?

17 A. Yes.

18 Q. Were there particular periods in the conversion
19 process in which you would have to run those error
11:13AM 20 reports, or did you just know generally when you had to
21 do them?

22 A. You ran the error reports once you had data in
23 there, in the EDPro database, to compare it to what was
24 in the Unix data, and those are the same kind of error
11:13AM 25 reports that once the customer has the program up and

1 running, they run all the time.

2 Q. So you're doing it kind of like a test?

3 A. Yes.

4 Q. But when do you determine when to run the error
11:13AM 5 report as part of this testing and verification process?

6 A. You know once you have data in the database
7 that you can run your first set of error reports because
8 that was on -- I don't know if it was ever on a list.
9 That was just the next step. You had to do it to see
11:14AM 10 where you were, to compare your new data to the old
11 data.

12 Q. And what would you do with the error report
13 once it was generated?

14 A. You had to read the error -- errors and look
11:14AM 15 at the data in the new database for each specific error
16 and then look at -- let's say if someone came in without
17 a Social Security number, then you would --

18 Q. Like an employee you mean?

19 A. An employee came in without a Social Security
11:14AM 20 number, then you would look back over the Unix system
21 that had a personnel program and a payroll. In the
22 EDPro, HR is all one program. So when the programmer
23 was running the conversion, there is a place where he
24 chooses to say pull all demographic information on
11:15AM 25 employees from either payroll or personnel.

Freedom Court Reporting, Inc**1**

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF TEXAS
 MARSHALL DIVISION

3 PATTY BEALL, MATTHEW)
 MAXWELL, DAVID GRAVLEY,)
 4 TALINA MCELHANY, KELLY)
 HAMPTON, KEVIN TULLOS,)
 5 CASEY BROWN, JASON BONNER,)
 ANTHONY DODD, ILENE)
 6 MEYERS, TOM O'HAVER, JOY)
 BIBLES, DON LOCCHI AND)
 7 MELISSA PASTOR,)
 Individually and on behalf)
 8 of all others similarly)
 situated,) CIVIL ACTION
 9)
 PLAINTIFFS,) NO.: 2:08-CV-422 TJW
 10)
 VS.)
 11)
)
 12 TYLER TECHNOLOGIES, INC.)
 AND EDP ENTERPRISES, INC.,)
 13)
 DEFENDANTS.)

14
 15 -----
 16 ORAL DEPOSITION OF
 17 TONY DODD
 18 APRIL 27, 2010
 19 -----

20
 21 ORAL DEPOSITION OF TONY DODD, produced as a witness
 22 at the instance of the DEFENDANTS, and duly sworn, was
 23 taken in the above-styled and numbered cause on the 27th
 24 day of April, 2010, from 9:10 a.m. to
 25 11:42 a.m., before Elaine Fowler, CSR in and for the
 State of Texas, reported by machine shorthand, at the
 offices of Cathy Sosebee & Associates, 901 Mac Davis
 Lane, Lubbock, Texas, pursuant to the Federal Rules of
 Civil Procedure and the provisions stated on the record
 or attached hereto.

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1 application.

2 Q. Okay. I got it. And just by way of example,
3 when you would train on balancing the till, what are you
4 doing, standing in the classroom with Power Point
5 walking someone through the different stages or looking
6 over someone's shoulder while they are playing with the
7 database and the information that goes in there or some
8 combination or something else?

9 A. We printed up fake money and actually did
10 sample transactions. And over the course of this
11 session we would do sample transactions and then we
12 would pretend it was the close of the day and then show
13 them how to run the daily report and balance the till.
14 And that required just walking around to the individuals
15 and showing them how to do it.

16 Q. It would be you and these individuals who were
17 employed by the county?

18 A. Correct.

19 Q. Did you ever do training with a program manager
20 or anyone else at Tyler, or would that be rare?

21 A. No. I occasionally trained additional
22 implementation specialists. So they would sit in on the
23 class as well so they could learn the software.

24 Q. But in terms of anybody supervising your
25 activities during the training, that would be unusual?

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1 A. Right. It never happened. Well, the first
2 time that I did it, Nate watched. After he said, okay,
3 he knows what he is doing, then that was at. And he is
4 another implementation guy.

5 Q. And that is Nate Moses?

6 A. Correct.

7 Q. You have produced a variety of receipts,
8 correct?

9 A. Correct.

10 Q. These are for gas and food and travel expenses?

11 A. Correct.

12 Q. I see there is a plane ticket to Chicago. Did
13 you go there for Tyler?

14 A. Through Chicago. I believe I was going to
15 Lansing, Michigan.

16 Q. Did you do an implementation up there?

17 A. I was still in my training phase for that one.

18 Q. And you submitted these expenses and were
19 reimbursed, correct?

20 A. Correct.

21 Q. Do you agree with me that these receipts don't
22 necessarily show the hours that you worked in a
23 particular day, correct?

24 A. Correct.

25 Q. Here is a receipt, for example, that is from

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1 Lowe's that looks like it is office equipment that you
2 purchased. Would you agree?

3 A. Correct.

4 Q. How many different implementations did you do
5 while you were at Tyler?

6 A. I imagine they would have a record of that, but
7 I -- I would just strictly be guessing. I don't know.
8 I probably did five or six in Texas and then I did a
9 few -- one in Michigan one in Helena, Montana. Again, I
10 don't recall.

11 Q. So it was around 10, in that ballpark?

12 A. Somewhere around there would be fair to say,
13 yeah.

14 Q. I will hand you a document and ask you to
15 identify that.

16 A. Okay.

17 Q. It is titled Implementation Checklist 1.9,
18 correct?

19 A. Correct.

20 Q. And this is one of the documents that you
21 produced today in connection with your deposition?

22 A. I am sorry. Can you rephrase that?

23 Q. Yeah. You provided this document to me through
24 your lawyer today in the deposition?

25 A. Correct. I don't know if it is in connection

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1 to it. It was just in my files.

2 Q. Right. That is all I meant. This was in your
3 files and you provided it today to us?

4 A. Correct.

5 Q. Okay. What is it?

6 A. It looks like just a checklist for what we did
7 to go through for implementation.

8 Q. Do you recognize the document?

9 A. I do. There is numerous versions of this, but
10 it is a general outline of how to do -- how to stage
11 software and whatnot.

12 Q. So you would use that at the configuration
13 staging?

14 A. In the staging phase of the implementation,
15 yes.

16 Q. Did you ever use this in connection with your
17 job?

18 A. Oh, certainly. This, or a more modern version.

19 Q. Is this a document that is tailored to a
20 particular project?

21 A. No. It just happened to be one that I printed
22 out. I mean, they had a lot of documents similar to
23 this available on-line, on the Internet. And as they
24 would make improvements and new revisions to the
25 software, then this document varied. So I don't know

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1 where this -- what -- this could have been done when I
2 was first hired or it could have been one of the newer
3 ones. I don't know. But it is representative of all of
4 them.

5 Q. Okay. But it wasn't necessarily tailored to a
6 particular customer project?

7 A. No, sir.

8 Q. Is that correct?

9 A. That is correct.

10 Q. And do you know what the numerical designation
11 1.0 refers to?

12 A. The version of this checklist.

13 Q. Okay. How did you find out about potential
14 employment with Tyler?

15 A. I believe it was something done through Monster
16 or Dice.

17 Q. Were you working somewhere at the time?

18 A. I was not. I was -- well, self-employed.

19 Q. Doing what?

20 A. Doing IT work. I do generalized IT work for
21 small businesses and physicians' offices, networking,
22 web development, a little bit of everything.

23 Q. How are you currently employed?

24 A. I am doing that same thing.

25 Q. Have you done that type of work continuously

Freedom Court Reporting, Inc

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1 A. Typically three to five. Occasionally there
2 would be 10 or 12 just depending on the location.

3 Q. And the size of the county?

4 A. And the size of the county.

5 Q. And would the people at the customer (sic) who
6 were being trained -- you were the one doing the
7 training, correct?

8 A. Correct.

9 Q. And how would you do the training? Would you
10 do it based on a Power Point presentation where you are
11 giving a speech or did they all have laptops where you
12 were kind of walking them through different assets of
13 the software?

14 A. Well, we provided handouts and we normally had
15 a training facility up with workstations for them to
16 work on. And I more or less would walk around and I
17 would demonstrate one time and let them see and then
18 they would log in to their training workstation and
19 duplicate it. So it was very hands-on training.

20 Q. Was there a training schedule that --

21 A. Yes.

22 Q. -- you were required to adhere to?

23 A. Yes, sir. Well, there was a training schedule
24 provided for me to use as a guide, you know. It varied
25 from site to site depending on if it was a small group

Freedom Court Reporting, Inc**39**

1 or a large group. So I would take the number of
2 people ahead of time and then break the schedule down
3 so I could show them the various functions in the
4 software and accommodate everyone during a week.

5 Q. Were you doing the training -- the same
6 training session for multiple people then?

7 A. Yes.

8 Q. Just based on their own schedules?

9 A. Correct.

10 Q. And did you use the guide to determine how long
11 to spend on particular aspects of the software or is
12 that something that you decided based on whatever
13 criteria?

14 A. It was something that was kind of handed down
15 to me in what I learned from Nate about how much time
16 you spend on various things. But, again, that -- it
17 depended on the end user. You know, if the end user
18 gets it the first time, you don't need to have -- and
19 there is two of them in the class, we didn't necessarily
20 spend a whole hour working on it. There was a little
21 bit of variance there.

22 Q. Was there anything --- what were the handouts
23 that you would provide?

24 A. They were documents provided by Tyler that were
25 instruction sheets on -- it essentially covered what we

Freedom Court Reporting, Inc

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1 were covering in the classroom.

2 Q. Okay. Did you determine the agenda for the
3 training in the sense of what particular topics to cover
4 with the employees?

5 A. No. That was pretty predetermined, you know.
6 It was provided, like I said, in the examples and then I
7 went by the example of the guy that trained me.

8 Q. When you say examples, what do you mean?

9 A. Shauna would send out a training template and
10 say here is what we did in such and such county, you
11 know, go by this. And I would go by that training
12 schedule.

13 Q. And when you say -- this is a document, the
14 training template?

15 A. Correct. Well, it is just a training -- a
16 schedule where we covered various topics, you know, an
17 outline of which topics to cover at which time frames.

18 Q. How long a document was this, a couple of
19 pages.

20 A. Maybe a couple of pages of them in here, if you
21 need to see them.

22 Q. "In here", being in the documents that you
23 provided?

24 A. Yes, sir.

25 Q. Can you locate those?

Freedom Court Reporting, Inc**41**

1 A. I sure can. It is really just -- it is a
2 schedule and a sign-up sheet. There is maybe a blank
3 one or two in here.

4 Q. I would like one that is completed, if you can
5 locate one.

6 A. Sometimes they would just end up in the trash
7 or in the floor afterwards. Here is a complete, I guess
8 what you would call, a training schedule and sign-up
9 sheet. It doesn't have signatures on it. But basically
10 it shows Monday, Tuesday, Wednesday, Thursday and Friday
11 broken down. And Shauna sent me that one and I, you
12 know, just modified it with the county details.

13 Q. What does that mean, you would modify it with
14 the county details?

15 A. Well, I would put the county name on it and
16 change the dates and times for the days that we had
17 allocated for training.

18 MR. MCKEEBY: I will go ahead and mark this
19 as Deposition Exhibit 4 just so we have it in the
20 record.

21 (Exhibit 4 marked.)

22 Q. (BY MR. MCKEEBY) And that is a completed
23 document?

24 A. Yeah. Well, it doesn't have signatures. We
25 would give this to the clerk and have her pass it around

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PATTY BEALL, MATTHEW)
MAXWELL, TALINA McELHANY,)
AND KELLY HAMPTON,)
individually and on behalf)
of all other similarly)
situated,)

Plaintiffs,)

) No. 2:08-cv-422

VS)

TYLER TECHNOLOGIES, INC.)
AND EDP ENTERPRISES, INC.,)
Defendants.)

ORAL DEPOSITION OF

LINDA ESTES CARRINGTON

4/8/10

ORAL DEPOSITION OF LINDA ESTES CARRINGTON,

produced as a witness at the instance of the DEFENDANTS,

and duly sworn, was taken in the above-styled and

numbered cause on the 8th day of April, 2010, from

9:18 a.m. to 12:23 p.m., before TINA TERRELL BURNEY, CSR

in and for the State of Texas, reported by machine

shorthand, at the offices of MORGAN, LEWIS & BOCKIUS LLP,

1717 Main Street, Suite 3200, Dallas, Texas 75601,

pursuant to the Federal Rules of Civil Procedure.

Linda Estes Carrington - 4/8/10

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18 ALSO PRESENT:

19 Mr. Lynn Moore
20
21
22
23
24
25

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1 A. And how that county wants to operate, but those
2 decisions aren't made by an implementation person.
3 They're made by someone else.

4 Q. When you're actually doing the configuring and
5 determining those rights and roles, you're doing that
6 based on the discussion that you've had with the -- I'll
7 use it broadly -- customer, correct?

8 A. You mean -- repeat that one more time.

9 Q. You said there were some instances where you
10 would actually do the configuration yourself as an
11 implementation specialist.

12 A. Uh-huh.

13 Q. Which I understand to mean -- and you correct
14 me if I'm wrong -- but I understand to mean that you
15 would actually go into the system and determine -- and
16 program, if you will, the system such that a certain user
17 has the appropriate access rights, correct?

18 A. Right.

19 Q. And in those instances, you would get that
20 information through your dialogue with the customer that
21 occurred?

22 A. The users, and through the instruction of the
23 project manager. And big projects, not even real big
24 projects, even smaller counties, will also have an
25 equivalent to the Tyler project manager. They'll have

Linda Estes Carrington - 4/8/10

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1 their own Odyssey project manager, you know, who's also
2 there to make decisions.

3 Q. But you have a dialogue with the customer as
4 well to tell them different access options?

5 A. Uh-huh.

6 Q. Is that right?

7 A. Yeah. And that's why you're showing them --
8 that's why you do a fit analysis, so that you can show
9 them the capability so they can start thinking about what
10 rights and roles they want to give to their people.

11 Q. Do you make any recommendations based on past
12 experience as an implementation specialist?

13 MS. BAGBY: Object to the form.

14 A. No, you try not to.

15 Q. Not at all?

16 A. No.

17 Q. Why not?

18 A. Because every county is different, and they
19 know what they want, and they've got their own culture
20 and their own thing.

21 Q. What if they asked you?

22 A. You just explain to them that it's -- I'll tell
23 you how it works, but I'm not going to tell you how you
24 need to run your office.

25 Q. That's a customer decision ultimately?

Linda Estes Carrington - 4/8/10

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1 A. Right, exactly.

2 Q. When we move to the training element of the
3 implementation, at that point have these decisions with
4 respect to configuration and roles and rights already
5 been made?

6 A. By the time you get to training?

7 Q. Yes.

8 A. Hopefully. You ideally would like for it to
9 be.

10 Q. But not in every case?

11 A. No, plus it's fluid.

12 Q. And you told me, I think, based on your
13 previous discussion, that the type of training that you
14 would provide as an implementation specialist would vary
15 from project to project?

16 MS. BAGBY: Object to the form.

17 A. You're talking about the training of the users?

18 Q. Yes. Was it always classroom training, for
19 example?

20 A. Most of the time you're going to have a
21 classroom environment for the clerks for the general
22 discussions. With the court admin, you may do
23 one-on-one.

24 Q. Okay. So you would do both classroom training
25 and one-on-one training as part of the training element

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1 A. Yes. And truancy.

2 Q. There's a truancy court?

3 A. Yes.

4 Q. And did you do the implementations for all of
5 those?

6 A. Uh-huh.

7 Q. Is that yes?

8 A. Yes, sir.

9 Q. I don't need the sir part, just the yes.

10 A. I'm just not doing well with that at all.

11 Q. That's all right. We'll get there.

12 All right. So you did the implementation
13 for all three of those, and how long did each of them
14 last? First of all, probate.

15 A. Probate lasted for almost a year.

16 Q. And civil?

17 A. I don't remember when we started civil. Civil
18 took about six months.

19 Q. And truancy?

20 A. Truancy only took about three or four months.

21 Q. In which one of the implementations did the
22 hardware problem exist in that you told me about, or did
23 that apply to all of them?

24 A. Probably almost all them. Yeah, it did apply
25 to almost all of them in varying degrees.

Linda Estes Carrington - 4/8/10

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1 Q. And because of that time delay, that was an
2 implementation where the training component was larger
3 than in other implementations? Is that what you're
4 explaining?

5 A. Yes. I was just giving you an example.

6 Q. Right. And I just want to make sure I
7 understand the example.

8 A. Yes.

9 Q. All right. Let's talk about conversion of
10 data. That was one of the elements of the implementation
11 process?

12 A. Yes, sir.

13 Q. Is that something that the implementation
14 specialist is involved in?

15 A. In conversion of data?

16 Q. Yes.

17 A. We don't -- the implementation person is not
18 really converting data as much as they are checking to
19 make sure data has been converted properly.

20 Q. But that's part of the conversion process?

21 A. Yes.

22 Q. Who is doing the actual data conversion, the
23 programmer?

24 A. Yes. There's another whole department that's
25 in charge of conversion.

Linda Estes Carrington - 4/8/10

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1 Q. Right, but are those programmers?

2 A. Developers.

3 Q. But those are people with whom you would
4 coordinate with in the implementation process?

5 A. Well, we don't really have to coordinate with
6 them. I mean, we have to...

7 Q. Well, what would you do to make sure data has
8 been converted properly by the developers?

9 A. You -- they're going to pull reports, and
10 you're going to check the codes.

11 Q. Is this something that's done at the client's,
12 at the courthouse?

13 A. It can be done at the client's site, but it's
14 done more often at the office.

15 Q. So what are you reviewing in the report to make
16 sure that the conversion has been done accurately?

17 A. You're reviewing the data and the codes that
18 match that data.

19 Q. And that information is conveyed to you in
20 these reports that you mentioned?

21 A. Yes.

22 Q. How do you know whether or not the codes match
23 the data?

24 A. Well, that's because you've got a list. You've
25 already -- for example, when we were talking about on

Linda Estes Carrington - 4/8/10

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1 A. Right, exactly.

2 Q. When we move to the training element of the
3 implementation, at that point have these decisions with
4 respect to configuration and roles and rights already
5 been made?

6 A. By the time you get to training?

7 Q. Yes.

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19 example?

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21 classroom environment for the clerks for the general
22 discussions. With the court admin, you may do
23 one-on-one.

24 Q. Okay. So you would do both classroom training
25 and one-on-one training as part of the training element

Linda Estes Carrington - 4/8/10

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1 of implementation?

2 A. Right. And sometimes with judges if they
3 wanted training. Not all judges wanted training.

4 Q. But sometimes you would train judges?

5 A. One-on-one, right, or in a group.

6 Q. And these classroom training sessions, would
7 there be questions and dialogue from the users?

8 A. Oh, yes.

9 Q. And would you typically be doing these
10 trainings on your own?

11 A. Yeah.

12 Q. And would you have a PowerPoint or a
13 presentation, or would you just be walking through, or
14 how would you do it?

15 A. Well, they each have a computer, and they each
16 have Odyssey on their computer, and we also had -- we had
17 training manuals with screen shots.

18 Q. What does that mean, training manuals with
19 screen shoots? That was part of the presentation?

20 A. Right, that we would hand them.

21 Q. Okay. So these would be handouts?

22 A. Yes.

23 Q. So you would walk them through the process at
24 that point?

25 A. Right. You would go through whatever -- let's

Linda Estes Carrington - 4/8/10

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1 say we were training on setting up hearings and
2 documenting hearing results, then you would go through
3 the whole process on that module.

4 Q. Would you ever encounter mistakes during that
5 training process?

6 A. You mean mistakes in the system?

7 Q. Yes.

8 A. Yes.

9 Q. What would you have to do in those instances?

10 A. You would note down that you needed -- that
11 somebody, either you or somebody, needed to go in and
12 correct it.

13 Q. How would you know there was a mistake in the
14 system?

15 A. Well, let's say you went in and you did the
16 drop-down box for hearing times, and you didn't have all
17 the hearing times in there.

18 Q. And you would know that through a dialogue with
19 the people in the training session?

20 A. Right.

21 Q. So then you would know to go back to the --
22 who, the programmer to --

23 A. No. An implementation person can go in and
24 change that.

25 Q. I see.

JOY M. BIBLES McLEOD; May 18, 2010

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PATTY BEALL, MATTHEW MAXWELL,)
TALINA McELHANY and KELLY)
HAMPTON, individually and on)
behalf of all other similarly)
situated,) 2:08-cv-422 TJW
Plaintiff(s),)
vs.)
TYLER TECHNOLOGIES, INC., and)
EDP ENTERPRISES, INC.,)
Defendant(s).)

DEPOSITION UPON ORAL EXAMINATION OF
JOY M. BIBLES McLEOD

1:35 P.M.

MAY 18, 2010

520 PIKE STREET, 12TH FLOOR

SEATTLE, WASHINGTON



REPORTED BY: MARY L. GREEN, CCR 2981

JOY M. BIBLES McLEOD; May 18, 2010

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6 October 13, 2006, letter to Joy Bibles 36

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8 October 9, 2006, e-mail to Connie Shaw and 53

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<p>1 If you're shadowing, that means you're going along with</p> <p>2 another Tyler Technologies person to watch them go</p> <p>3 through the implementation process?</p> <p>4 A. Or they're watching me because I'm training</p> <p>5 them.</p> <p>6 Q. So if it's not a situation where you're</p> <p>7 shadowing someone or they're shadowing you while you're</p> <p>8 training them, it's just you and the client team?</p> <p>9 A. Yes, Ma'am.</p> <p>10 Q. Who would be amongst that client team?</p> <p>11 A. It could be the treasurer. It could be the</p> <p>12 accounting department. Sometimes it's like persons</p> <p>13 from all the other groups, parks and recreation,</p> <p>14 construction, other people who would be involved that</p> <p>15 will be affected by the projects, because they might</p> <p>16 have to set up their own project. You might have parks</p> <p>17 and recreation, the library, anybody who would have</p> <p>18 need to use that project.</p> <p>19 Q. And does that differ by client as well?</p> <p>20 A. Yes, Ma'am.</p> <p>21 Q. And going into it, do you know these types of</p> <p>22 nuances that are client specific?</p> <p>23 A. At the first configuration meeting, you may</p> <p>24 not.</p> <p>25 Q. And that's a face-to-face meeting?</p>	<p>1 packaging of these implementation packages of to dos</p> <p>2 and the structure of things you have. You give the</p> <p>3 agenda to the client. We have this list of things that</p> <p>4 we're supposed to do, and we present that to the</p> <p>5 client. We have these things that we implement from,</p> <p>6 tried and true implementation guides, and that's</p> <p>7 what --</p> <p>8 Q. Like what kind of thing? Is it like a recipe</p> <p>9 where you say I need to tell you now that you need</p> <p>10 to --</p> <p>11 A. Yes, Ma'am. It's pretty much a recipe.</p> <p>12 Q. You use no discretion in there whatsoever?</p> <p>13 You don't use your brain basically?</p> <p>14 MS. BAGLEY: Object to the form.</p> <p>15 A. No. We go -- if we go off the guide, we're</p> <p>16 supposed to contact the consulting manager or the</p> <p>17 project manager.</p> <p>18 Q. (BY MS. PERLIONI) And these agendas, they</p> <p>19 don't have those client nuances listed, correct?</p> <p>20 A. No, Ma'am, they don't.</p> <p>21 Q. So you have to talk to the client and find out</p> <p>22 what the nuances are for any particular client,</p> <p>23 correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And then you configure based on the different</p>
Page 97	Page 99
<p>1 A. Yes, Ma'am.</p> <p>2 Q. And approximately how long does your first</p> <p>3 configuration meeting typically last?</p> <p>4 A. It could be two days. It depends on how big</p> <p>5 the client is.</p> <p>6 Q. It could be two days. It could be what?</p> <p>7 A. It could be one day. It could be two days. I</p> <p>8 guess if it's a county, it could be three days. It</p> <p>9 depends on who comes to the meeting.</p> <p>10 Q. Why does it take so long to have those types</p> <p>11 of discussions?</p> <p>12 A. Because sometimes you're deciding -- it could</p> <p>13 be because you're configuring the client. It could be</p> <p>14 because only certain people can be there for the first</p> <p>15 meeting to get these decisions hammered out. It could</p> <p>16 be certain departments are going to be at the first</p> <p>17 meeting and then you're showing another group for the</p> <p>18 second meeting. It just depends.</p> <p>19 Q. As you work through the different variables or</p> <p>20 nuances for this particular client and you configure it</p> <p>21 in their system, you said you then give them sort of a</p> <p>22 task list?</p> <p>23 A. Yes, Ma'am.</p> <p>24 Q. How do you come up with that task list?</p> <p>25 A. The task list is already preformed by the</p>	<p>1 nuances of this particular client?</p> <p>2 A. Yes, Ma'am.</p> <p>3 Q. And then when you give them their task list,</p> <p>4 does that have to be in any way altered based on the</p> <p>5 nuances that the particular client brings to the table?</p> <p>6 A. Well, the implementation guide allows for</p> <p>7 those nuances, because particularly with project</p> <p>8 management, the software is configured with enough</p> <p>9 variety or enough diversity to allow for those.</p> <p>10 So there's a lot of flexibility in the way</p> <p>11 that those modules are, particularly the module that I</p> <p>12 implemented, in that if it can't fit within this box</p> <p>13 with all these different varieties, then we contact the</p> <p>14 project manager and say it won't fit into the mold with</p> <p>15 all these variations. The client wants to do this.</p> <p>16 What should I do?</p> <p>17 Q. Just so I'm understanding, the software has so</p> <p>18 many variables or options that are available?</p> <p>19 A. Yes, Ma'am.</p> <p>20 Q. And then you sit down and go over that with</p> <p>21 the customer --</p> <p>22 A. Yes, Ma'am.</p> <p>23 Q. -- and determine what they want to do, and</p> <p>24 then you configure all these different available</p> <p>25 options within the software?</p>

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25 (Pages 88 to 91)

Page 88	Page 90
<p>1 had during the time that you were employed as an 2 implementation consultant? 3 A. Yes. These responsibilities look familiar. 4 Yes. 5 (Deposition Exhibit 13 was marked for 6 identification.) 7 Q. (BY MS. PERLIONI) I'm going to hand you 8 another document. 9 MS. BAGLEY: Joy, you should read over 10 that. 11 MS. PERLIONI: I've offered to give her 12 all the time to read over it, so if you want her to 13 spend more time reading over this, then we're going off 14 the record. 15 MS. BAGLEY: It's your document that 16 she's never seen before. 17 MS. PERLIONI: Then let's give her an 18 opportunity to review it, but it's not fair to say 19 you're going to count off of our 3 hours when she's 20 taking the time to read word for word. I don't think 21 that's appropriate deposition time. 22 MS. BAGLEY: There are a lot of things I 23 don't agree are appropriate in use of deposition time 24 either. 25 MS. PERLIONI: I mean, if it comes down</p>	<p>1 Q. Can you tell me where that is? 2 A. It's implementation consultant continued. 3 Didn't participate in the user conference. 4 Q. I see. So where it says participate in the 5 annual user conference, you didn't actually -- 6 A. I didn't do that. Where it says become 7 competent in other disciplines, generic business 8 process review, project management, web application 9 deployment, crystal report writer, didn't do that. 10 Q. Anything -- 11 A. Achieving certification of multiple modules, 12 didn't do that. Pursue diversity that was not 13 technical specification, those weren't things that were 14 done. Prepare appropriate training materials as new 15 products are developed, didn't have anything to do with 16 writing training documentation. (Reviewing). So far 17 that's all I see that jumped out to me. 18 Q. And you've read through the entire document 19 that we've marked Deposition Exhibit 12, correct? 20 A. As fast as I can and process it with the time 21 that I had, yeah. 22 Q. We haven't tried to hurry you. We've given 23 you all the time you need. 24 A. (Reviewing). 25 MS. PERLIONI: Let the record reflect</p>
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<p>1 to be an issue, we can take this to the judge, but I 2 don't think not agreeing to give her the time off the 3 record to review the document is a good or is an 4 appropriate response. 5 A. (Reviewing). 6 MS. PERLIONI: Let the record reflect 7 that we're all sitting here while she's reviewing what 8 we've marked as Deposition Exhibit 12. 9 A. Okay. 10 Q. (BY MS. PERLIONI) After you've had a chance to 11 review Deposition Exhibit 12, is it still your 12 testimony that it accurately reflects your job duties 13 and responsibilities during the time you held the 14 position of implementation consultant with Tyler 15 Technologies? 16 A. Most of these things do. 17 Q. Is there any that are listed on here that you 18 do not -- or that were not part of your 19 responsibilities? 20 A. I didn't participate in the user conference. 21 Q. Wait. Real quick, I want to make sure we're 22 straight on the record. It looks to me like you're 23 looking on the second page of Deposition Exhibit 12 24 marked 72330. 25 A. Uh-huh.</p>	<p>1 we're again sitting here as Ms. Bibles goes back 2 through the job description marked as Deposition 3 Exhibit 12. 4 A. I didn't work with the client to develop 5 procedures, documentation, and office systems to 6 facilitate software installation. I never did that. 7 Q. (BY MS. PERLIONI) Anything else? 8 A. (Reviewing). And I didn't document client 9 requirements. 10 MS. BAGLEY: Where is that? 11 THE WITNESS: Right here. 12 A. Thoroughly identify and document client 13 requirements to a level of detail required to design 14 configure, I didn't do that. 15 Q. (BY MS. PERLIONI) Anything else on Deposition 16 Exhibit 12? 17 A. If I see something, I'll let you know as we 18 go. I don't see anything now. 19 Q. I'd like to go back to what we marked 20 Deposition Exhibit 11. It's your declaration. 21 A. Okay. 22 Q. I'm looking specifically at paragraph 3. 23 "During the time I was an implementation consultant 24 with Tyler Technologies, Inc., my job duties consisted 25 primarily of walking clients through the implementation</p>

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<p>1 got a problem.</p> <p>2 Q. Give me some other examples of types of</p> <p>3 problems that you personally were able to identify when</p> <p>4 looking at the customer's data in the test program.</p> <p>5 A. If we would have had subtasks that said things</p> <p>6 like land use, permitting, and those ended up in phase</p> <p>7 descriptions, that would have said construction 1,</p> <p>8 construction 2, construction 3, and those descriptions</p> <p>9 ended up in phases, I would have known we've got a</p> <p>10 problem here because those are subtask descriptions in</p> <p>11 phase descriptions. That's an issue.</p> <p>12 So those are the kinds of things that would</p> <p>13 have jumped out. If we would have had budgeting</p> <p>14 numbers in phase descriptions, those would have been a</p> <p>15 problem.</p> <p>16 Q. How do you know that, though?</p> <p>17 A. Well, when you see the client, you set it up</p> <p>18 and you work with project accounting enough, you start</p> <p>19 recognizing what phase descriptions are, and when you</p> <p>20 see budget numbers show up in a phase description, you</p> <p>21 know at first glance that we have a problem.</p> <p>22 Q. So that's based on your prior experience?</p> <p>23 A. Exactly.</p> <p>24 Q. What other kind of things are you looking</p> <p>25 through of the test data to look for to try to</p>	<p>1 I'm going to call the project manager. Those are the</p> <p>2 kinds of things I would do.</p> <p>3 I would never go off what our plan was, call</p> <p>4 the project manager, call conversion, because Tyler</p> <p>5 Technologies had their own plan about what to do if</p> <p>6 there was a problem, but the client also had to develop</p> <p>7 a plan about what they were going to do.</p> <p>8 If their Go Live date was June 1, obviously</p> <p>9 they couldn't do that, so when they developed their</p> <p>10 plan, it had to also include what we were going to do</p> <p>11 as a company, which meant we were going to work with</p> <p>12 our conversion team, talk to the consulting manager,</p> <p>13 because obviously that meant another trip for me to</p> <p>14 come down there once everything was cleaned up.</p> <p>15 Q. So you're collaborating with the client.</p> <p>16 You're collaborating with Tyler. You're all working</p> <p>17 together to come up with a plan for whatever it is</p> <p>18 you've discovered when you're looking at the software?</p> <p>19 A. Right.</p> <p>20 Q. "I also trained clients on how to operate the</p> <p>21 new software program."</p> <p>22 Do you see that? What different methods did</p> <p>23 you utilize to train clients? I mean, it could be</p> <p>24 classroom training with a PowerPoint, pure lecture,</p> <p>25 sitting down at computers, one-on-one with some people</p>
Page 117	Page 119
<p>1 troubleshoot or see if there are any problems?</p> <p>2 A. When the client imports budgets and you know</p> <p>3 they've imported budgets and they were there in test</p> <p>4 and they're not in production, that's a problem.</p> <p>5 Q. Any other kind of things that you're looking</p> <p>6 for to try to see if there are any problems with the</p> <p>7 data?</p> <p>8 A. The client does the validating, and then when</p> <p>9 they say there's a problem, I come and confirm that</p> <p>10 there's a problem, and then I would go ahead and call.</p> <p>11 Q. When you say validating, you mean comparing, I</p> <p>12 guess, what the Tyler software is showing and what they</p> <p>13 expect it to show?</p> <p>14 A. Exactly.</p> <p>15 Q. Let's go back to your declaration that we</p> <p>16 marked Deposition Exhibit 11. "If there were errors in</p> <p>17 the converted data, I would assist the customer with</p> <p>18 developing a plan for correcting errors in their</p> <p>19 existing database."</p> <p>20 What does that mean?</p> <p>21 A. Well, if they had errors -- well, let's say</p> <p>22 the budgets were missing. Then we would sit there and</p> <p>23 I would say, okay, first of all, I'm going to call the</p> <p>24 conversion team and we'll see what we can do to get</p> <p>25 that taken care of. Obviously you can't roll this out.</p>	<p>1 that are struggling. Just give me some of the various</p> <p>2 different types of training that you utilized when</p> <p>3 working with clients to teach them how to operate the</p> <p>4 new software program.</p> <p>5 A. Well, I didn't deviate from the Tyler plan. I</p> <p>6 had to stay with that, because that's duplicatable, so</p> <p>7 everything was based on that.</p> <p>8 Q. What Tyler plan are you talking about?</p> <p>9 A. The Tyler training plan for whatever module we</p> <p>10 were implementing, because the whole idea is if</p> <p>11 something happened to me, somebody else had to pick up</p> <p>12 right where I left off, and people couldn't be told</p> <p>13 something different or be confused by that.</p> <p>14 Q. But the plan, is that like a customer</p> <p>15 hand-out? Is that something you're giving to the</p> <p>16 client?</p> <p>17 A. Yeah. There's a training guide. There's an</p> <p>18 instruction manual. Everything has to be duplicatable,</p> <p>19 so whatever it was, it had to stay with that. So if I</p> <p>20 was working with a client, that was always the</p> <p>21 foundation to keep that duplicatable.</p> <p>22 If I was out of the picture, we couldn't</p> <p>23 confuse the client so that if somebody else came in</p> <p>24 that the client was saying, well, Joy was just here,</p> <p>25 and that's not how she trained us. So it always had to</p>

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<p>1 be with that, whether it was one-on-one, whether it was 2 a group of people, whether it was city, county, 3 whatever it was. 4 There was a PowerPoint to do an overview. 5 There was always an agenda that went to the client 6 before the trip. Then we just showed them whatever was 7 in the Tyler training, the Tyler training materials, 8 the overhead hands-on, and then usually picked somebody 9 from the class to do the driving. 10 We called it the driving so they could roam 11 around the application, which left us free to go around 12 the classroom, so if someone was struggling we could 13 help them, hold people more accountable if they were 14 going to check e-mail or be on the Internet, and then a 15 lot of questions and answers and some exercises so that 16 people could get some hands-on with that. 17 Q. You write, "I performed my job primarily at 18 the customers' offices where I would remain until the 19 training was complete and the customer was up and 20 running on EDEN software." 21 Approximately how many times did you actually 22 go out to a customer site? 23 A. I believe it was a minimum of three. 24 Q. Is that per implementation or is that three 25 times total during your employment?</p>	<p>1 live. I don't know what no conv means. 2 Q. Can you hand me Deposition Exhibit 13 back? 3 A. (Handing). 4 Q. I'm going to hand you something else. This 5 one I'm marking Deposition Exhibit 14, and this may be 6 easier to read. 7 (Deposition Exhibit 14 was marked for 8 identification.) 9 MS. PERLIONI: I'm sorry. My pages got 10 stuck together. 11 Q. (BY MS. PERLIONI) Take a look at Deposition 12 Exhibit 14. See if you recognize that. 13 A. (Reviewing). No. 14 Q. You might not recognize the actual print-out 15 or the format of this report. I'm just wondering if 16 you look on it if any of the data or information that's 17 contained on Deposition Exhibit 14 looks familiar to 18 you. 19 A. (Reviewing). It looks like some time entry. 20 Q. Under sold to short name on Deposition 21 Exhibit 14, do you see the first one says Highland? 22 A. Uh-huh. 23 Q. Who do you believe that to be? 24 A. I don't know. 25 Q. What about below that, Albany?</p>
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<p>1 A. Per implementation. 2 Q. And do you recall how many implementations you 3 did? 4 A. No, Ma'am, I do not. 5 Q. I'm going to hand you a document that I marked 6 as Deposition Exhibit 13. If you'll take a look at 7 Deposition Exhibit 13 and tell me if you recognize it. 8 A. No. 9 Q. If you look at it -- and I'll represent to you 10 I think this is information that was printed out of 11 Tyler Technologies' system. If you see customer name 12 sort of in the middle of Deposition Exhibit 13, do you 13 see City of Pensacola? 14 A. Yes, Ma'am. 15 Q. Was that a client that you performed training 16 for? 17 A. I think so, and Mindy shadowed me. 18 Q. Look over at the far right where it says what 19 -- I believe the heading is supposed to be description. 20 Do you see that? 21 A. Yes. 22 Q. Do the entries under description mean anything 23 to you? 24 A. (Reviewing). Vaguely. BQ, what was that? I 25 can't remember what that module was. Set-up ops go</p>	<p>1 A. Uh-huh. Yeah. In Oregon. 2 Q. What is that? 3 A. That was a client I did project accounting 4 for. 5 Q. I thought you didn't do any project 6 accounting. 7 A. I did do -- that's what I've been talking 8 about is project accounting. 9 Q. I thought you didn't do the accounting module 10 at all. 11 A. Project accounting is an auxiliary module. 12 Q. You're right. I'm sorry. Tumwater. 13 A. Another client I did project accounting for. 14 Q. So did this appear to be if you look through 15 the different sold to, short name the clients for whom 16 you worked during the time that you were with Tyler 17 Technologies? 18 A. Uh-huh. 19 Q. Are there any clients that you recall working 20 with that are not reflected in Deposition Exhibit 14? 21 A. I don't know. I don't remember all the 22 clients I worked for. 23 Q. Sitting here today, though, you don't? 24 A. I don't. They don't come to mind, no. 25 Q. Look at what we have as 13 and 14. It appears</p>

Russell Steele - 4/9/10

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PATTY BEALL, MATTHEW)
MAXWELL, TALINA MCELHANY)
AND KELLY HAMPTON,)
individually and on behalf)
of all other similarly)
situated;)

Plaintiffs,)

vs.) 2:08-cv-422 TJW

TYLER TECHNOLOGIES, INC.)
AND EDP ENTERPRISES, INC.)

Defendants.)

ORAL DEPOSITION OF

RUSSELL STEELE

APRIL 9, 2010

ORAL DEPOSITION OF RUSSELL STEELE, produced as a
witness at the instance of the Defendants and duly
sworn, was taken in the above-styled and -numbered cause
on the 9th day of April, 2010, from 9:17 a.m. to
12:35 p.m., before Brenda Fleming, CSR in and for the
State of Texas, reported by machine shorthand at the
offices of Morgan, Lewis, & Bockius, LLP, 1717 Main
Street, Suite 3200, Dallas, Texas 75201-7347, pursuant
to the Federal Rules of Civil Procedure and the
provisions stated on the record.

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EXHIBITS

EXHIBIT NO.	DESCRIPTION	PAGE
1	Consent to opt in signed by Russell Steele on 9-23-09	11
2	Résumé of Rusty E. Steele	24

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1 THE WITNESS: Okay.

2 MS. BAGLEY: Almost, well, two hours.

3 (Break from 10:54 to 11:06)

4 Q. (By Ms. Khosravi) Rusty, I want to make sure
5 you realize that you are still under oath even though we
6 took a break.

7 A. Yes.

8 Q. Since we took a break, do you have any changes
9 to any of the answers that you've given previously that
10 you need to make?

11 A. One of the things I didn't clarify on was, that
12 I can remember, in the applications that I actually did,
13 that I actually trained on -- the miscellaneous
14 applications, the court application -- those
15 applications rarely had a conversion with them.
16 Sometimes they had a conversion.

17 Q. I have no idea what that means, Rusty.

18 A. A conversion?

19 Q. Uh-huh.

20 A. You are converting from the previous software
21 that the city had to the INCODE software. So you are
22 taking data from one software, and you are trying to
23 convert it to the fields of the INCODE software.

24 Q. You are saying you did have input with
25 conversion of data, or you did not?

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1 A. I would verify data with the conversions. If
2 there was a conversion, I would verify. When I would be
3 on site, when I would go onto the city's site, I would
4 have my contact point. And if there was a conversion
5 that was involved, then I would say, Well, here's the
6 data. This is what we converted. We need to look it
7 over and make sure it looks okay to you.

8 Q. So you had -- in this situation you would have
9 converted data to the new software?

10 A. I didn't do the conversion.

11 Q. Yeah. Who would have?

12 A. I guess the developers. The project manager
13 would actually obviously take ahold of all that and tell
14 the developer, We're doing a conversion. And then the
15 developer does -- I don't know what they do as far as
16 the conversion. But I would get on site on Monday, or
17 whenever it was, and any conversion that had taken
18 place, I would verify the data with the city personnel.

19 Q. So somebody at Tyler would say, Rusty, we did a
20 conversion. And so you knew a conversion of documents
21 had taken place?

22 A. A conversion of data had taken place, yes.

23 Q. Of data. Excuse me.

24 A. That's correct.

25 Q. So when you got on site, you would review the

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1 data to make sure it was converted correctly into

2 INCODE?

3 A. Yes.

4 Q. What does that process entail?

5 A. I'll give you an example. We had -- let's say,
6 if it was accounts receivable. There are customers that
7 obtain or are billed for, you know, for the city mowing
8 their yard or what have you. They owe the money to the
9 city for some reason, some service that the city
10 provided. And now the city is trying to collect it.
11 You are trying to receive that debt.

12 If there was a conversion involved, then
13 the customer's name, the customer's mailing address, the
14 city, state, ZIP codes were in certain fields in the old
15 software. Therefore, when they convert, they need to be
16 in the same fields in the new software.

17 And I would review that data with the
18 customer.

19 Q. Would you do it when you were there for
20 training?

21 A. Yes.

22 Q. Okay. Go on.

23 A. Verifying conversion data would happen first
24 before you ever started doing training. And once you
25 got to a point to where you thought the conversion was

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1 we're going to take this live, so no more playing
2 around.

3 Is that how it worked?

4 A. That's how it worked.

5 Q. Did you have an agenda when you got there with
6 respect to training? I'm going to train you on this
7 module first, then this, then that. How did you --
8 that's still what I'm trying to understand. If you come
9 to me, are you going to show me how to turn on my
10 computer, how to sign in? How do you know what I know
11 and what you need to train me on?

12 A. You're expected to know a certain level of
13 computers --

14 Q. The employees?

15 A. -- before I got out there. The personnel of
16 the city. That wasn't always the case. But you were
17 expected to know that.

18 And the project managers were the ones
19 that made sure that they talked to a contact person
20 there at the city before I ever get there and said, This
21 is what he's been training on. This is -- you know,
22 basic knowledge of the computer is what's expected.

23 I would get there, and I would tell them
24 I'm here for the court system, you know, the municipal
25 court system, to train on the municipal court system.

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1 There really wasn't any kind of agenda. We just went
2 and trained. You know, we started off with the -- not
3 the database, but the -- we started off with entering
4 citations, which was the most common thing on a
5 day-to-day operations. And then you moved on from
6 there, the life of a citation to the process.

7 Q. So I'm understanding this correctly, there
8 wasn't an actual document with you where you were
9 sitting there looking at it going: Number one, I need
10 to teach her how to enter citations. Okay.

11 It didn't work that way?

12 MS. BAGLEY: Object to form.

13 A. Not that I recall. I don't remember doing
14 anything like that.

15 Q. Because that's my question to you. I'm trying
16 to figure out how is it that you knew how to train them.
17 You didn't have a document that you had prepared prior
18 to your trip up there?

19 A. Right.

20 Q. You didn't prepare anything that prepared you
21 for the actual training? It was all in your head?

22 A. Yes.

23 Q. And when you got there with the personnel,
24 again, you didn't have a document, an agenda, item
25 numbers 1 through 10, going across and checking those

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1 off; or did you?

2 A. I don't recall.

3 Q. Now, when you were teaching them as to how to
4 enter the citations, did you have a document with you
5 that you would flip through and read in order to try to
6 train them? Or, again, it was all your knowledge that
7 you were training them on?

8 A. Right. Previous experience with the software.
9 There was nothing that I had that marked everything off.

10 Q. I understand now.

11 And what if they asked you questions, did
12 you just -- during your training was this an interactive
13 process, where if they asked you questions, you would
14 then work through it with them?

15 A. Yes. I would tell them what the software is
16 designed to do. And if they asked me any legal
17 questions as of what is it supposed to be, I would refer
18 them back to their city attorney or their city finance
19 director, whoever it might be.

20 Q. And, again, when they are asking you questions,
21 they're interrupting you. Let's say you are showing
22 them how to enter a citation. And they go, Oh, Rusty,
23 wait, but I don't know how, you know, X, Y, and Z will
24 play out.

25 You would then show them right then and

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1 there to answer their question, or no? Would you go
2 grab a document and turn to the page that said, If they
3 ask this, then this is the answer you give?

4 A. No, there was no document. It was just, we
5 would go ahead, and if they had a question about the
6 software, we would -- I would tell them, This is how you
7 do it.

8 Q. And this was based on your knowledge having
9 worked with the software previously?

10 A. That's correct.

11 MS. BAGLEY: Object to the form.

12 Q. I think I'm understanding now.

13 So that was initially when you went on
14 board with INCODE. And you said your position was a
15 trainer?

16 A. I'm trying to remember exactly what my title
17 was.

18 Q. And I don't care about the title.
19 Functionality-wise, is that what you did, you trained?

20 A. Yes.

21 Q. Did it change in any way after that?

22 A. The title changed. The position -- the
23 functionality did not.

24 Q. Okay. So your title changed. It became
25 something else. Do you remember what your title became?

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1 three days, three days of training, which normally you
2 would think eight hours of training, but that wasn't
3 normally what I did. If I was there -- if I was
4 scheduled to be there all week --

5 Q. You mean at the city's offices?

6 A. At the city's offices. If I was supposed to be
7 there Monday and leave on Friday, then I would normally
8 be there from 8:00 to 5:00 on site. And if there was
9 any issues that needed, you know, that would come up,
10 say with conversion or what have you, then I would
11 e-mail the project manager with my concerns or my
12 supervisor or any other concerns, after 5:00 in my hotel
13 room.

14 Q. What happens if you were supposed to be there
15 Monday through Friday, but let's say that Tuesday ended
16 up being a Federal holiday and the office was closed? I
17 want to know how you spend your time then. What
18 happened then?

19 A. I usually try to work around those, to where I
20 didn't split it up that way. If I did split it up -- I
21 can't remember a time when I did that. Because I would
22 normally say, Well, you've got a holiday on Monday; I'll
23 show up on Tuesday. Or you have a holiday within the
24 middle of the week, then what I'll do, I'll be there
25 Monday, Tuesday, and then I'll come back Thursday,

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1 Friday.

2 Q. If there were problems, such as conversion
3 issues, you wouldn't -- I thought earlier you were
4 telling me, as you're training you would then contact a
5 project manager, tell him there was a conversion
6 problem, so they could deal with that while you were
7 training?

8 A. Correct.

9 Q. Now I'm hearing that you weren't doing that.
10 You were doing it after hours. Clarify that for me.

11 MS. BAGLEY: Object to the form.

12 A. I was doing it while I was training -- or
13 actually -- if it was a conversion, I would look at the
14 conversion with the client prior to training. If we
15 find something during training, then I would write it
16 down. If it was a specific major issue, then I would
17 contact a project manager immediately. But if it was a
18 minor, real small issue, then I would wait until after
19 5:00 o'clock or when I had a break, and I would e-mail
20 the project manager with my issue.

21 Q. So you made a decision whether or not it needed
22 to be brought to the project manager's assistance right
23 then or there or whether it could wait to be done later,
24 after you left for your hotel?

25 A. If it didn't interrupt my training, then I

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1 continued on with my training, and I contacted them
2 later.

3 Q. But you made that decision as to when you were
4 going to contact your project manager?

5 A. Depending on the importancy of the -- of the --
6 I mean, if we're missing names, obviously I can't train
7 without names.

8 Q. Right.

9 A. If I'm missing a ZIP code, I can train without
10 a ZIP Code.

11 Q. So you made that decision --

12 A. Right.

13 Q. -- when you needed to call the project manager?

14 A. It's not stopping me from training them.

15 That's right.

16 Q. And so when you -- let's say it was one of
17 those problems that you waited until later, when you
18 left the client's site. You would go to your hotel.
19 Walk me through how many hours you would -- how did that
20 work? What would you do when you got to the hotel?

21 A. If the conversion was complex, then I would
22 spend a few hours, anywhere from one to three hours,
23 reviewing the data off site so that I didn't have to,
24 you know, have them in front of me with them just seeing
25 that the problems with the conversion were there. I

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1 didn't like -- usually conversions were real -- the
2 conversions weren't pretty. They weren't pretty at all.

3 Q. What does that mean? The data themselves?
4 What do you mean when you say that?

5 A. Well, when you have a ZIP Code in the name
6 file --

7 Q. Yeah.

8 A. -- and that's all you have, then there's an
9 issue.

10 Q. Okay.

11 A. When you have the money amount completely, I
12 mean, jacked up, as far as -- and I say "jacked up."
13 I'm sorry. That's slang. But the decimal is missing or
14 the decimal is in the wrong place or you've gone back
15 and you've got all their history and you've put it to
16 what they owe now -- I mean, there's a lot of different
17 fields that you have to take into account with these
18 conversions. And if it wasn't a pretty conversion, then
19 you spent more time on it with the data verification.
20 And you didn't want to have to do that in front of the
21 client because it made the software look bad, and it
22 made the company look bad. So you continued with your
23 training the way you did it.

24 Q. Did you make a call at that point, okay, I
25 should probably stop doing this in front of the client

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Education: B.A., *summa cum laude*, University of Dallas, 1973
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Experience: 1994 – Present – Principal, Law Offices of Brian T. Farrington
1993-Present - President, Harry Weisbrod Associates
1989-1993 - Vice President, Harry Weisbrod Associates
1975-1989 - U.S. Dept. of Labor, Wage and Hour Division

Brian T. Farrington received his B.A. *summa cum laude* from the University of Dallas, and an M.A. with honors from the University of Chicago. In 1975, he became an Investigator with the Wage and Hour Division of the U.S. Department of Labor. In this capacity, he was responsible for enforcing a number of Federal labor laws through conducting investigations of businesses.

Mr. Farrington was an Investigator in Chicago from 1975 to 1982, with 18 months off to pursue graduate studies. In 1981, he became a Senior Investigator. In 1982, he transferred to Ft. Worth, where he continued as an Investigator until 1984. During his tenure as an Investigator, Mr. Farrington conducted some 500-600 full Wage-Hour investigations, along with another 300-400 more limited enforcement actions.

Mr. Farrington has substantial management experience. In 1984, he became Assistant District Director (this position is sometimes called "Director of Enforcement") in the Dallas District Office of Wage-Hour. In this capacity he was directly responsible for the District Office's enforcement program, and directly supervised between 12 and 16 subordinates. Mr. Farrington was involved in hiring, training, evaluating, and disciplining of the Investigators who reported to him. He supervised some 5,000 investigations in the five years he held the position.

As Assistant District Director, Mr. Farrington was required to know the FLSA and the other laws enforced by the Wage-Hour Division thoroughly. He was responsible for determining in each case whether the law was properly applied by the Investigator, whether the evidence was adequate to support the Investigator's conclusions, and whether back wages had been calculated properly. When cases could not be settled at the Investigator level, he conducted "second level" negotiations to attempt to secure from employers and their representatives agreements to comply with the law and pay back



wages. When necessary, Mr. Farrington made the decision that litigation by the Government was appropriate, and sent the file to the Regional Solicitor of Labor with that recommendation.

In 1989, Mr. Farrington resigned from the Government to join the well-known Wage-Hour consulting firm of Harry Weisbrod Associates, where he began to assist employers with Wage-Hour, EEO, and other labor relations matters. In 1993, Mr. Farrington became President of Harry Weisbrod Associates. In 1994, he was licensed to practice law in the state of Texas. His practice consists of consulting with employers to assist them in compliance, and representing them in investigations by the U.S. Department of Labor, Wage and Hour Division. He also advises clients on compliance with state wage and hour laws, and represents them in investigations by state Departments of Labor. Mr. Farrington also advises employers on compliance with anti-discrimination laws, and responds on behalf of clients to charges of discrimination filed with the Equal Employment Opportunity Commission and/or analogous state agencies.

Mr. Farrington is the author of numerous articles and several books. He wrote WAGE-HOUR COMPLIANCE, which was published in 1995 by Warren, Gorham and Lamont. He also wrote the SHRM "Legal Report" on the 1996 FLSA amendments for the Society for Human Resource Management. From 1990 until 1996, he taught a course which he designed, and for which he wrote the book-length course manual, on "Wage-Hour and EEO Compliance" for the Professional Development Institute at the University of North Texas. This course was approved for 8 hours of Continuing Professional Education for Certified Public Accountants by the Texas Society of CPA's, and for 6.75 hours of Continuing Legal Education by the Texas Bar Association. In 2000, he wrote another book-length course manual and designed and began teaching a course on compliance with employment regulations for the American Institute of Certified Public Accountants.

Mr. Farrington has completed another book, A WAGE-HOUR GUIDE FOR THE SELF STORAGE INDUSTRY, published in 2006.

Mr. Farrington is noted for his exceptional ability as a speaker and trainer. He has taught sessions on the FLSA for the State Bar Associations of Texas and Arkansas, and for the Dallas Bar Association. He has addressed groups such as the Society for Human Resource Management, the Texas Payroll Conference, attendees at ADP's "Meeting of the Minds" national conference, Ceridian Corporation's "Insights" national conference, local chapters of the Human Resources Associations, American Payroll Association, American Compensation Association, and many others.

Mr. Farrington has been used as a consulting and/or testifying expert in over fifty FLSA cases in federal and state courts across the country.